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ACKNOWLEDGMENT. See DEED, 1.

ACTION. See ADMINISTRATOR, 1. SUNDAY, 2. TORT, 1.

1. No action lies to recover excessive freight paid to a railroad, in the absence of any duress, fraud or extortion. *Potomac Coal Co.* v. *C. & R. Railroad*, 191.

2. No action lies to recover money voluntarily paid, even if the party supposed he was bound in law to pay it. *Lafayette & Indianapolis R. R.* v. *Pattison*, 252.

3. Money paid under duress either applied to property or the person may be recovered. *Id.*

4. A person whose horses, frightened by a locomotive, became uncontrollable, ran away with him, went upon land of another, and broke a post there, is not liable for the damage if it was not caused by any fault on his part. *Brown* v *Collins*, 364.

5. Where debtor alleges that he transferred notes and mortgages to his creditor to collect them, and pay himself, and hand over surplus, and that there is a surplus, an action at law is stated and not one in equity. *Dickson* v. *Cole*, 587.

6. If the creditor releases a mortgage-debt received as collateral having taken a conveyance of the land, without the debtor's consent, he is liable to account to him for the amount. *Id.*

7. A party declining to accept payment except in a way to which he is not entitled, cannot insist that the action is prematurely brought. *Macky* v. *Dillinger*, 389.

8. Threats of bodily hurt which occasion such inconvenience as to produce pecuniary damage are actionable. *Grimes* v. *Gates et ux.*, 645.

9. A mere fear is not sufficient. *Id.*

10. Where threats are made by letter it is only necessary to set out the substance of the threats. *Id.*

11. Where plaintiff was induced to buy a patent-right, by the false and fraudulent representations of defendant, an action on the case will lie. *Somers* v. *Richards*, 773.

12. Plaintiff need not prove all the allegations of the declaration, if less will constitute cause of action. *Id.*

ACTS OF CONGRESS.

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ADMINISTRATOR.

1. An action for injury to real estate does not survive to an administrator. *Forist* v. *Androscoggin R. I. Co.*, 50.

2. To sustain such action under the statutes of New Hampshire, the facts on which administrator's right depends must be stated in declaration. *Id.*

ADMIRALTY. See NAVIGATION, 2.

1. The United States Courts have exclusive jurisdiction over maritime contracts. *Murphy* v. *Mobile Trade Co.*, 50.

2. The common-law remedy saved by the Act of 1789, is a remedy which attaches to the interests of the owner of the vessel. *Id.*

3. Supplies furnished in Mobile, to a steamboat plying between there and Columbus, the owner being a citizen of Mississippi, is a maritime contract. *Id.*

4. The proceedings in admiralty embraced in R. C. 3127-3147 are inoperative in all cases of maritime contract. *Id.*

5. In admiralty, the pendency of proceedings *in personam* cannot suspend those *in rem*. *People ex rel. Granger* v. *Wayne Circuit Judge*, 389.

6. Courts cannot treat them as involving identical issues. *Id.*

7. An appeal in admiralty from the District Court, in effect, institutes the matter *de novo* in the Circuit Court. *The Lucille*, 587.

8. An order merely affirming the decree of the District Court is not such as the Circuit Court should make, and no appeal lies to Supreme Court. *Id.*

9. In case of collision the inferential evidence of the officers of the colliding vessel, will not weigh against the direct testimony of those of injured one. *The Wenona*, 645.

10. A false manœuvre at the moment of collision on the part of a schooner, will not exonerate a steamer which had nothing to mislead it. *The Falcon*, 645.

11. Where libel alleged total loss, which answer substantially admitted, the fact that the vessel was finally repaired is no defence. *Id.*

12. A decree for total loss is a bar to any claim by the former owners of a vessel. *Id.*

13. Where a steamer running seven knots in a dense fog and approaching Sandy Hook, collides with a bark under way and *ringing a bell*, the damages will be equally divided. *The Pennsylvania*, 646.

14. A vessel committing a positive breach of statute must show that it *certainly* did not contribute to a disaster. *Id.*

AGENT. See EVIDENCE, 27. INSURANCE, 19, 21. RAILROAD, 10. TROVER, 1. USURY, 5.

1. A general agent is one who is authorized to transact all the business of his principal, or all of a particular kind or at a particular place. *Cruzan* v. *Smith*, 191.

2. The principal is bound by the acts of a general agent, although he may have violated private instructions. *Id.*

3. A special agent is one authorized to do a specified act. *Id.*

4. Principal is not bound by act of special agent if he exceeds his authority. *Id.*

5. Third parties must ascertain extent of special agent's authority. *Id.*

6. Where a company issues to a person an open policy with blanks for the risks agreed upon by him, and authority to take the premiums, he is to be deemed their agent. *Wass* v. *Maine Marine Insurance Co.*, 259.

7. Commercial agents have no right to sell the merchandise of their principal as part of a lot, without his consent. *Coes* v. *Nash*, 451.

8. SPECIAL AGENCY, 657.

AGREEMENT.

An agreement to extend the time of payment of a note, to be valid, must be supported by a consideration. *Marcellus* v. *Countrymen*, 261.

ALIEN. See TERRITORIES, 1.

1. The police power of the state may be exercised by precautionary measures against the increase of crime or pauperism, or the spread of infectious diseases from persons coming from other countries. The state may entirely exclude convicts and persons afflicted with incurable disease; may refuse admission to paupers, idiots and lunatics and others, who from physical causes are likely to become a charge upon the public until security is afforded that they will not become such a charge; and may isolate the temporarily diseased until the danger of contagion is gone. *In the Matter of Ah Fong*, 761.

2. The extent of the power of the state to exclude a foreigner from its territory is limited by the right of self-defence. Whatever outside of the legitimate exercise of this right affects the intercourse of foreigners with our people, their immigration to this country and residence therein, is exclusively within the jurisdiction of the general government, and is not subject to state control or interference. *Id.*

3. The 6th Article of the Treaty between the United States and China, adopted on the 28th of July 1868, provides that Chinese subjects visiting or residing in the United States shall enjoy the same privileges, immunities and exemptions in respect to travel or residence as may there be enjoyed by citizens or subjects of the most favored nation, and as the general government has not seen fit to attach any limitation to the ingress into the United States of subjects of those nations, none can be applied to the subjects of China. *Id.*

4. The Fourteenth Amendment to the Constitution declares that no state shall deprive *any person* of life, liberty or property, without due process of law; nor deny to *any person* the equal protection of the laws; *Held*, that this equality of protection implies not only equal accessibility to the courts for the prevention or redress of wrongs, and the enforcement of rights, but equal exemption with others of the same class, from all charges and burdens of every kind. Within these limits the power of the state exists, as it did previously to the adoption of the amendment, over all matters of internal police. *Id.*

5. On the 31st of May 1870, Congress passed an act declaring that "no tax or charge shall be imposed or enforced by any state upon any person immigrating thereto from a foreign country which is not equally imposed or enforced upon every person immigrating to such state from any other foreign country, and any law of any state in conflict with this provision is hereby declared null and void;" *Held*, 1st. That the term *charge*, as here used, means any onerous condition, and includes a condition which makes the right of an immigrant, arriving in the ports of the state, to land within the state depend upon the execution of a bond by a third party, not under his control, and whom he cannot constrain by any legal proceedings; and, 2. That the statute of California, which prohibits foreign immigrants of certain classes, arriving in the state of California by vessel, from landing until a bond shall have been given by the master, owner or consignee of the vessel that they will not become a public charge, and imposes no condition upon immigrants of the same class entering the state in any other way, is in conflict with the Act of Congress. *Id.*

AMENDMENT. See ARBITRATION, 3. PLEADING, 5.

1. Additional counts to a declaration in trespass q. c. f. without alleging the breaking of a close, complained of the taking of certain logs. *Held* that the amendment did not change the original cause of action. *Knapp* v. *Hartung*, 451.

2. Plaintiff may add count different from declaration if he does not change cause of action. *Id.*

3. This applies to actions *ex delicto*, as well as *ex contractu*. *Id.*

4. The name of an additional plaintiff may be added in ejectment, after suit brought. *Kaul* v. *Lawrence*, 521.

5. An amendment should not be allowed so as to deprive the opposite party of any right. *Id.*

AMENDMENT.

6. A party cannot introduce a new cause of action by amendment. *Kaul* v. *Lawrence*, 521.

7. It is the settled rule in Wisconsin that a party cannot by amendment change his cause of action nor the nature of his defence. *Supervisors of Kewaunee Co.* v. *Decker*, 646.

APPLICATION OF PAYMENTS.

Where payments are made generally they may be applied by the creditor to such items of the account as are not secured. *Murphy* v. *Webber*, 256.

APPRENTICE. See DAMAGES, 1.

ARBITRATION.

1. An award that shows on its face that but two out of three arbitrators heard and deliberated cannot be sustained. *Bartolett* v. *Dixon*, 389.

2. It need not appear that all the referees heard and deliberated, the presumption is that when not made by all that the minority refused to join. *Id.*

3. In an action on an award it is discretionary with the court to allow an amendment to the answer of the defendant. *McCord* v. *McSpaden*, 704.

4. It is not error to permit the defendant to state the differences between himself and the plaintiff, for the purpose of showing that the arbitrators acted on matters not submitted to them. *Id.*

5. The statement of any *fact*, bearing upon the question of whether arbitrators were guilty of any misconduct, is allowable in an action on an award. *Id.*

ASSUMPSIT.

1. Taxes voluntarily paid by the plaintiff on land in possession of the defendant, without his request, cannot be recovered from defendant. *Bryant* v. *Clark*, 51.

2. Where plaintiff pays the defendant, a constable, the amount of an execution in his hands against him, with the fees for the collection, he cannot recover the fees so paid. *Strafford* v. *Blaisdell*, 51.

3. A party who furnishes a supper to a large number of men, may recover the price from the ones who ordered it, though the supper was the result of a bet on a squirrel hunt. *Winchester* v. *Nutter*, 53.

4. Where a party has unlawfully sold securities belonging to another, the latter may waive the fraud and sue in *assumpsit*. *Allen* v. *United States*, 326.

ATTACHMENT. See BAILMENT, 2. INSURANCE, 14.

ATTORNEY. See SHERIFF, 2.

1. The provisions of the statute for the suspension of an attorney being penal, must be strictly construed. *Klingensmith* v. *Kepler*, 192.

2. An attorney cannot be suspended from practice by the default of his partner. *Id.*

3. The power to punish for contempts is inherent in all courts; its existence is essential to the preservation of order in judicial proceedings, and to the enforcement of the judgments, orders and writs of the courts, and consequently to the due administration of justice. The moment the courts of the United States were called into existence and invested with jurisdiction over any subject, they became possessed of this power. *Ex parte Robinson*, 435.

4. The Act of Congress of March 2d 1831, entitled "an act declaratory of the law concerning contempts of court," limits the power of the Circuit and District Courts of the United States to three classes of cases: 1st, where there has been misbehavior of a person in the presence of the courts, or so near thereto as to obstruct the administration of justice; 2d, where there has been misbehavior of any officer of the courts in his official transactions; and, 3d, where there has been disobedience or resistance by any officer party, juror, witness or other person, to any lawful writ, process, order rule, decree or command of the courts. *Id.*

5. The 17th section of the Judiciary Act of 1789, in prescribing fine or imprisonment as the punishment which may be inflicted by the courts of the United States for contempts, operates as a limitation upon the manner in which their power in this respect may be exercised, and is a negation of al

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other modes of punishment. *Ex parte Robinson*, 435.
6. The power to disbar an attorney is possessed by all courts which have authority to admit attorneys to practice. But the power can only be exercised where there has been such conduct on the part of the party complained of as shows him to be unfit to be a member of the profession; and before judgment disbarring him can be rendered he should have notice of the grounds of complaint against him and ample opportunity of explanation and defence. *Id.*
7. *Mandamus* is the appropriate remedy to restore an attorney disbarred where the court below has exceeded its jurisdiction in the matter. *Id.*

AUCTION.
Where a sale by auction is announced as "positive" it is fraud for vendor to employ others to keep up the price by bidding. *Walsh* v. *Barton*, 647.

AWARD. See ARBITRATION.

BAILMENT. See BANK AND BANKER, 6. SHERIFF, 1.
1. Where unfinished property is held by a creditor as collateral security, and is finished by him, equity will compel the payment of the creditor's disbursements before any application is made on the debt. *Rowan* v. *State Bank*, 53.
2. The creditor's equity is superior to that of an attaching creditor. *Id.*
3. An agreement for the sale of property which the vendee promises to hold in his possession is a contract of bailment. *Johnston* v. *Whittemore*, 389.
4. If the bailee sells or converts bailor may maintain trover for it. *Id.*
5. Where specific securities which have been delivered to one, are surrendered to another, trover or a special action for damages is the proper action and not *assumpsit*. *Barnum* v. *Stone and Berry*, 389.

BANK AND BANKER. See INSOLVENT, 3.
1. Bank directors will be held responsible to the depositors for the loss or conversion by the bank of special deposits in such bank, whenever they know of such conversion, or might have known of it by the exercise of such care and diligence as the law requires of such officers in representing the affairs of the bank. *United Society of Shakers* v. *Underwood*, 211.
2. Bank directors must be considered as affected with the knowledge of such facts as appear upon the bank books. *Id.*
3. A receiver appointed under the 50th section of the National Banking Act may sue for demands due the bank in his own name as receiver. *Bank* v. *Kennedy*, 333.
4. He need not get an order from the comptroller to entitle him to sue, to collect the assets is his official duty. *Id.*
5. Bankers have no lien for advances on boxes containing securities deposited with them for safe keeping. *Leese* v. *Martin*, 587.
6. They are gratuitous bailees. *Id.*
7. Though a bank may be deprived by statute of the right to take real estate, still it may through a trustee obtain control of real estate on which it had a lien and sell the same. *Zantzingers* v. *Gunton*, 587.
8. A National Bank is not bound to make a formal acceptance of a cashier's bond. Acceptance will be presumed from the presentation to and retention by the bank, and the entry of the cashier on his duties. *Graves* v. *Lebanon National Bank*, 617.
9. The sureties of a cashier are liable for default made after the execution of their bond, although the bank may have published accounts of its affairs, as required by law, which were untrue and calculated to mislead. *Id.*
10. The directors of a National Bank published a statement of the condition of the bank, showing apparently a correct and prosperous administration. In fact the cashier had at that time made defaults which a slight degree of care would have discovered. Shortly after the publication of the statement the cashier filed a bond with sureties. On the subsequent discovery of the default and suit against the sureties it was *held*, that the bond was void as to them, having been based on misrepresentations. *Id.*
11. *Semble*, It will be *presumed* that a surety under such circumstances, had read and acted on the published statement. *Id.*
12. Shares of stock in a national bank are personal property, but the law

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creating them could separate them from the person of their owner, for the purpose of taxation, and give them a *situs* of their own. *Tappan, Collector*, v. *Merchants' Nat. Bank*, 713.

13. The 41st section of the National Banking Act of June 3d 1864, separating the shares, became a law of the property and every state within which a national bank was located acquired jurisdiction for the purpose of taxation. *Id.*

14. Nothing in Article IX. of the Constitution of Illinois of 1848, prevented the legislature from taxing the owner of shares in the place where the bank was located. *Id.*

BANKRUPTCY.

I. *Jurisdiction.*

1. The bankrupt court has jurisdiction of a petition by one partner, though proceedings are pending in a state court to wind up partnership. *In re Noonan*, 121.

2. Such petition being voluntary need not allege an act of bankruptcy. *Id.*

3. A dissolution of partnership does not put an end to the power of bankrupt court. *Id.*

4. So long as any unfinished business remains the court has jurisdiction. *Id.*

5. The District Court has no jurisdiction of involuntary bankruptcy, unless it appears there are over $300 of debts, and bankrupt is indebted to petitioner over $250. *In re Skelley*, 122.

6. When indebtedness is reduced below that sum by subsequent payments, the court loses jurisdiction. *Id.*

7. The creditor cannot add the costs to his debt to raise it above the jurisdictional limit. *Id.*

8. Nor can he add counsel fees. *Id.*

9. MARRIED WOMEN AS BANKRUPTS, 129.

10. A fire insurance company is within the scope of the bankrupt law. *In re Merchants' Ins. Co.*, 193.

11. Appointment by a state court of receiver is a "taking on legal process" within the 39th section of the bankrupt act. *Id.*

12. The jurisdiction of the Federal Courts is exclusive. *Id.*

13. The failure to file petition, and acquiescence in proceedings by state court against insolvent insurance company, is an act of bankruptcy. *Id.*

14. Payment of rent to preserve a valuable lease is an act of bankruptcy. *Id.*

II. *Effect of Proceedings.*

15. The purchaser of a note from the payee, after the institution of bankruptcy proceedings against him, takes no title to the note. *In re Lake*, 193.

16. Proceedings in bankruptcy are notice to all the world. *Id.*

III. *Fraudulent Preferences.* See COURTS, 3, 4. HOMESTEAD, 7.

17. To render a mortgage void under the 35th section, it is not necessary that the debtor knew or believed himself insolvent. *Hall* v. *Wager*, 120.

18. It is a logical sequence that when an insolvent gives a mortgage to one creditor he does it to give him a preference. *Id.*

19. The Act of 1841 declares void preferences made by a party *contemplating* bankruptcy, the Act of 1867 includes those, by a party *being insolvent*. *Id.*

20. Every act that tends to defeat equal distribution should be construed strictly against an insolvent, *Id*

21. What constitutes insolvency should be determined by the general custom of insolvent's place of business. *Id.*

22. A mortgage given to a creditor who had reasonable cause to believe the debtor insolvent is a fraud upon the act. *Id.*

23. The question is, had the creditor "reasonable cause to believe"—not what he *did* believe. *Id.*

24. When partners are insolvent they hold the partnership effects in trust for firm creditors and cannot by transfer defeat the trust. *In re Cook & Gleason*, 121.

25. A sale by one partner to his copartner when the firm is insolvent is presumptively fraudulent. *Id.*

26. Such transfer is void under the 35th sec. of the Act. *Id.*

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IV. *Proof of Debts.*

27. A party purchasing claims against a bankrupt in good faith should not be deprived of participation in the estate. *In re Strachan*, 120.

28. To enable him to prove he should take an assignment. *Id.*

29. Such claims should be proven as of date of adjudication. *Id.*

30. The act should not be construed so as to prevent a debtor from making every effort to extricate himself. *Id.*

V. *Property Exempt.*

31. Insolvent having sold his homestead cannot move his family into his store and hold that as exempt. *In re Wright*, 193.

32. He can sell his homestead but cannot shift it to the prejudice of his creditors. *Id.*

33. The provision of the Bankruptcy Act adopting the exemption laws of the several states has been sustained on the ground that it enacted a *uniform rule* that such property should be subject to its operation for the payment of debts, as was liable to judicial process for the same purpose, in the several states. *In re Deckert*, 624.

34. The Amendatory Act of March 3d 1873, so far as it departs from this rule and attempts to exempt property specified in the state laws, in a different manner or with different effect from that of the laws themselves, is a violation of the constitutional requirement of uniformity and therefore void. *Id.*

VI. *Discharge.*

35. The recovery of a judgment upon a contract induced by fraud, is not a debt *created* by fraud within the act, and a discharge is a good defence to an action upon such judgment. *Palmer* v. *Preston*, 51.

36. If bankrupt's assets are 50 per cent. of the debts proved, he is entitled to his discharge without the assent of his creditors. *In re Kahley*, 193.

VII. *Rights and Duties of Assignee.* See COURTS, 1.

37. Assignee may maintain suit to collect assets in any District Court. *Goodall Assignee* v. *Tutle*, 192.

38. Such right though not expressly conferred is implied from grant "to collect assets." *Id.*

39. Congress must have intended to provide for the complete administration of the bankrupt system, and as there is no authority given to Circuit Courts to entertain such suits, it must be in District Courts. *Id.*

40. Legislature adopting statute of another state is presumed to have adopted the judicial construction thereof. *Id.*

41. Covenant in mortgage to keep the premises insured for benefit of mortgagee is valid against assignee in bankruptcy as a lien on insurance-money. *In re Sands Ale Brewing Co.*, 193.

42. Such covenant runs with the land and is notice to creditors. *Id.*

BILL OF LADING.

Assignment of bill of lading conveys title to cargo. *Tilden* v. *Minor*, 51.

BILLS AND NOTES.

I. *Form, Consideration.* See AGREEMENT. CONFEDERATE STATES, 4.

1. In Kentucky, negotiable paper, unless discounted at a bank, passes subject to all equities existing between the parties. Where it is given for the price of land, the vendor executing a deed, with full covenants of warranty of title, the land being at the time encumbered by a mortgage or vendor's lien, the purchaser will be entitled, in equity, to set off the amount of the mortgage against his notes, if before the notes become due the vendor has become insolvent. And the vendee, having said to one who had the notes for sale, that they "were all right," will not preclude him from making such defence. *Thompson* v. *Tenley*, 99.

2. A note given by a clerk in a post-office to the postmaster for the payment of the amount embezzled by the clerk, is not founded on a consideration illegal and void as against public policy, though postmaster agreed not to prosecute if he got the note. *Bibb* v. *Hitchcock*, 390.

3. It is no defence to a suit on a note, that defendant told plaintiff when he

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was about to buy, not to do so, that there was a promise when it was made that it should not be negotiated and he would buy a law-suit. *Heist et al.* v. *Hart*, 452.

4. A parol agreement that payee will not negotiate, and will renew, is inadmissible to vary the effect of a note. *Id.*

5. Taking a note on which the endorsements are forged, in renewal of a previous one, does not extinguish the original note. *Ritter* v. *Singmaster*, 521.

6. The record of the notary being proved to contain a true copy of the original note, was admissible in evidence. *Id.*

7. The bank discounting the first note was entitled to recover. *Id.*

8. The receipt by a surety of a note from the principal, after he has paid his liability, will not extinguish the surety's claim on a note of a third person which the principal has previously given him as indemnity. *Pinney* v. *Kingston*, 647.

9. The defence of, *without consideration*, should be sustained by evidence which leaves no reasonable doubt. *Punch* v. *Williams*, 647.

10. A paper promising to pay with interest a sum specified and acknowledged to be due "as soon as the crop can be sold or the money raised from any other source," is neither in form nor effect a promissory note. *Nunez* v. *Dautel*, 706.

11. It is a promise to pay upon the occurrence of either of the events, *or* after the lapse of a reasonable amount of time. *Id.*

12. What is a reasonable time is for the court to determine; five years is more than a reasonable time. *Id.*

13. A note, "Twelve months after date [or before if made out of the sale of a machine]" I promise to pay &c.: is negotiable. *Ernst* v. *Steckman*, 706.

14. To be negotiable a note must be payable at a fixed time, and must not depend upon a contingency. *Id.*

15. It is negotiable if payable *certainly* at a fixed time though subject to a contingency under which it may be due earlier. *Id.*

II. *Endorsement, Acceptance.*

16. A joint owner of a note cannot be charged as endorsee by his co-owner, nor by any one except he be a *bonâ fide* holder for value, and took it before maturity. *Norton* v. *Edgar*, 51.

17. A purchaser from a joint owner who is authorized to sell his co-owner's interest, takes the whole interest, but whether he can charge such co-owner as endorser, depends on the facts. *Id.*

18. If a joint owner sells, without his co-owner's consent, the purchaser acquires only the seller's interest. *Id.*

19. An endorser of an accommodation note is a creditor of the drawer, within the 4th sect. of Statute of Frauds. *Phelps* v. *Morrison*, 52.

20. Though the statutes of Michigan require an acceptance to be in writing they do not prescribe in what form it shall be. *Peterson* v. *Hubbard*, 452.

21. Anything written by the drawee indicating an intention to accept is sufficient. *Id.*

22. An endorsement of a partial payment on an order, made by the party paying, is an acceptance. *Id.*

23. A note given by F. to L. to reimburse him for the payment of a bill of exchange on which he was endorser for F.'s benefit, is not illegal because the bill was paid in Confederate money. *Lyon* v. *Robertson*, 453.

24. The relative rights and duties of parties who endorse a promissory note for the accommodation of the maker, are the same as in the case of a business note. A subsequent endorser who pays it, may recover of a prior endorser the whole amount paid, and not merely a contribution, as in the case of sureties. *Kirschner* v. *Conklin*, 471.

25. And it makes no difference that the endorsers both knew that each was an accommodation endorser, so long as there was no actual agreement between them to share the liability. *Id.*

26. Nor in the absence of such an agreement, that the object of the en-

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dorsements was to enable the maker to get a loan at bank upon the note, and that they were to operate together as a security to the bank. *Kirschner* v. *Conklin*, 471.

27. Where a bank presents bills to the drawers with an accompanying ticket representing that the bank held bills of lading to cover them, the drawers will be liable on their acceptance though the bills of lading turn out forgeries, unless the bank represented them as good. *Baxter* v. *Chapman*, 587.

III. *Notice.*

28. A notice of protest delivered to an endorser on Sunday is void, and does not render him liable on the note. *Rheem* v. *Carlisle Bank*, 499.

29. The mere receipt by the endorser of the notice in a sealed envelope, even if told what it is, does not, without his saying or doing anything to mislead the notary, amount to a waiver of the irregularity. *Id.*

30. Nor does the receipt of notice in that way on Sunday amount to a valid notice to him on Monday, though a new notice to him on that day would have been in time. *Id.*

BOOM. See NAVIGATION, 2.

BOND.

A bond-holder who converts his bonds into stock, in accordance with a provision to that effect, is only entitled to receive stock to the amount of the principal of his bond, and cannot claim a share of any new stock that has been issued by the company, to pay its interest to its stockholders. *Sutliff* v. *C. & M. Railroad Co.*, 775.

BOUNDARY. See RIPARIAN OWNER, 4.

1. An ancient boundary of a municipal jurisdiction may be proved by general reputation. *Morgan* v. *Mayor of Mobile*, 52.

2. The location of a boundary is subject to parol evidence. *Id.*

3. In order to make monuments govern courses and distances, the location of the monuments must be proved, if no monuments are mentioned in a deed, or if mentioned, are not proved; courses and distances will govern. *Bagley* v. *Morrill*, 708.

4. If land is described as lying north of a road-bed, while the boundaries include the bed, it will pass by the conveyance. *Williams et al.* v. *Sparks*, 776.

BROKER. See LICENSE, 1.

CANAL. See CONSTITUTIONAL LAW, 48.

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CASES APPROVED, OVERRULED, &c.

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Bay City *v.* State Treas., 23 Mich. 503, approved. *Park Coms.* v. *Common Council*, 524.

B—— *v.* I——, 22 Wis. 372, distinguished. *Scheer* v. *Keown*, 590.

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Clark *v.* Campan, 19 Mich. 325, approved. *Bay City Gas Co.* v. *Industrial Works*, 526.

Dean v. Nelson, 10 Wallace 172, affirmed. *Lasere* v. *Rochereau*, 335.

Dole *v.* Johnson, 50 N. H. 452, affirmed. *Ellingwood* v. *Bragg*, 57.

Ætna Life Ins. Co. *v.* McCormick, 20 Wis. 565, approved. *Scheer* v. *Keown*, 711.

Folson *v.* Ins. Co., 18 Wall. 237, affirmed. *Cooper* v. *Omohundro*, 654.

Foss *v.* Edwards, 47 Maine 145, overruled. *Hackett* v. *Lane*, 123.

Gilson *v.* Bingham, 43 Vt. 410, explained. *Davenport* v. *Hubbard*, 777.

Higgins *v.* Whitney, 24 Wend. 379, approved. *Dallon* v. *Landahn*, 391.

House *v.* Foster, in Washington Co. Vt. 1852, cited. *Johnson* v. *Muzzy*, 55.

Massey *v.* *Seaden*, L. Rep. 4 Ex. 13, cited. *Wharton* v. *Kirkwood*, 592.

CASES APPROVED, OVERRULED, &c.

McBride *v.* Ins. Co., 30 Wis. 562, approved. *Smith* v. *Amazon Ins. Co.*, 651.

Otis *v.* Jones, 21 Wend. 394, approved. *Dalton* v. *Landahn*, 391.

People *v.* Saunders, 25 Mich. 119, cited. *Beebe* v. *Knapp*, 458.

People *v.* Mahany, 13 Mich. 487, approved. *Park Coms.* v. *Common Council*, 524.

Rex *v.* Russel, 6 B. & C. 566, overruled. *Atty. Genl.* v. *Terry*, 591.

Roberts *v.* Fisher, 43 N. Y. 159, approved. *Roberts* v. *Fisher*, 262.

The Baltimore, 8 Wall. 373, distinguished. *The Falcon*, 646.

Thompson *v.* Whitman, 18 Wall. 457, affirmed. *Knowles* v. *Gas Light Co.*, 591.

Thornton *v.* Smith, 8 Wall. 1, explained. *The Confederate Note Case*, 707.

Toms *v.* Wilson, 7 L. T. Rep. N. S. 421, cited. *Wharton* v. *Kirkwood*, 592.

CERTIORARI.

1. A certiorari must be directed to all persons whose return is necessary to enable the court to determine the regularity of the proceedings. *The People ex rel. Davis* v. *Hill*, 52.

2. If writ is directed to all the officers or bodies whose action completed the act complained of, it is sufficient. *Id.*

3. When the acts of different officers do not form part of one official act separate writs must issue. *Id.*

4. When ministerial acts are complained of the writ should be directed to the officer acting. *Id.*

5. A ministerial act cannot be complained of unless connected with a judicial act. *Id.*

6. If the action of ministerial officer is necessary to give relief, the court should compel return. *Id.*

7. A party is entitled to a common-law *certiorari* to review the determination of a judicial officer or body when there is no other remedy. *The People ex rel. Akin* v. *Morgan*, 122.

8. He must have an interest in the case to entitle him to the writ. *Id.*

9. On certiorari the court of review is governed by the return alone and will not consider papers annexed thereto. *Id.*

10. Though a tax-payer cannot maintain an action to restrain the collection of a tax, he is entitled to a certiorari to review the proceedings of the assessors. *The People ex rel. Akin* v. *Morgan*, 128.

11. Where the assessors have to determine a fact their decision becomes judicial and reviewable by certiorari. *Id.*

CHARITABLE USE. See WILL, 9.

CHECK.

The payee of a check whose name has been endorsed without his authority may recover from the bank paying it. *Seventh National Bank* v. *Cook*, 522.

CHURCH.

THE LAW OF RELIGIOUS SOCIETIES AND CHURCH CORPORATIONS, 65.

CITIZEN. See ALIEN, 2. NATURALIZATION.

CIVIL RIGHTS. See COMMON CARRIER, 11, 12. CONSTITUTIONAL LAW, 7, 9, 15.

An Act of Congress which says "no person shall be excluded from the cars of a railroad, on account of color," means that colored persons shall travel in the same cars as white ones. *Railroad Co.* v. *Brown*, 326.

COIN. See COVENANT, 4. SHIPPING, 9.

COLLATERALS. See BAILMENT, 1. DEBTOR AND CREDITOR, 8, 9.

COMMON CARRIER.

1. Carriers of live-stock are not insurers. For accidents necessarily incident to the live-stock in transportation, they are not liable. *Louisville R. R. Co.* v. *Hedger*, 145.

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2. They are bound nevertheless to extraordinary diligence, such as a prudent and careful man would exercise in the business of stock transportation. *Louisville R. R. Co.* v. *Hedger*, 145.

3. They cannot discharge themselves from this liability by any contract with the owner of the live-stock. *Id.*

4. Common carriers may limit their liability as insurers by special agreement: but such agreement cannot be implied from the publication of notices by the carrier, unless the owner knows of such notices, and expressly assents to the limitation of liability therein contained. (Per PRYOR. J.) *Id.*

5. The loss or injury of live-stock in the custody or care of the carrier, is *primâ facie* evidence of negligence. *Id.*

6. But when the owner takes charge of his stock during transportation, negligence must be shown to render the carrier liable. *Id.*

7. Common carriers of passengers have the legal right to make reasonable and proper rules and regulations for the conduct and accommodation of all persons who travel by their conveyances. *Coger* v. *N. W. Union Packet Co.*, 162.

8. The sale of a ticket to a passenger is a contract to carry such passenger according to their rules and regulations. *Id.*

9. They have no right however to make rules or regulations for their passengers, based upon any distinction as to race or color. *Id.*

10. A negro woman who purchases a first-class dinner ticket on a Mississippi steamboat is entitled to sit at the same table as the other passengers. *Id.*

11. This is a right secured to her by the laws of the state of Iowa, and the Constitution of the United States. *Id.*

12. The object of the 14th Amendment to the Constitution of the United States, was to relieve citizens of African descent from the effects of the prejudice theretofore existing against them; and to protect them in person and property from its spirit. *Id.*

13. A carrier receiving goods to deliver to a connecting express, becomes a forwarder as soon as the goods arrive at the end of his route, and his liability as carrier ceases. *Inhabitants of No. 4 Plantation* v. *Hall et al*, 254.

14. In a suit against such forwarder for negligence the burden of proof is on the plaintiff. *Id.*

15. Cannot exempt himself from responsibility for negligence of himself or servants. *Railroad Co.* v. *Lockwood*, 326.

16. The rule applies to a drover travelling on a free pass, and looking after his cattle. *Id.*

CONFEDERATE NOTES. See BILLS AND NOTES, 23.

1. Where suit is brought to enforce a contract payable "in dollars" and made during the war, evidence is admissible to show that Confederate notes were meant. *The Confederate Note Case*, 706.

2. The presumption is that lawful currency of the United States was intended. *Id.*

3. The understanding of the parties may be shown from the nature of the transaction, and where the bonds of a railroad were issued, payable in from seven to thirteen years, lawful money, and not Confederate notes, will be presumed to have been meant. *Id.*

4. The interest on a bond is payable in the same currency as the bond. *Id.*

CONFEDERATE STATES. See EXECUTORS AND ADMINISTRATORS, 1. WAR, 1.

1. A judgment and sale of mortgaged premises within the lines of the Federal army, against one who had been expelled into the Confederacy, is null and must be reversed. *Lasere* v. *Rochereau*, 334.

2. Judicial proceedings had in Alabama during the war are not void. *Copeland Admr.* v. *Winston*, 397.

3. The records of the courts in Alabama during the war are provable in the same manner as those of the present courts. *Id.*

4. A suit prosecuted to judgment during the war against the maker of paper not commercial, is a sufficient compliance with the statute, to fix the liability of the assignor. *Id.*

CONSTITUTIONAL LAW.

I. *Power of Congress.*

1. Military commissions and their acts, during the late war, were unconstitutional in states that were undisturbed. *Milligan* v. *Hovey*, 122.

2. The members of such commissions and U. S. army officers are liable for arrest and imprisonment. *Id.*

3. Also for imprisonment beyond their jurisdiction if it was in consequence of sentence pronounced by them. *Id.*

4. An Act of Congress would not be a justification if the trial by commission was forbidden by the Constitution. *Id.*

5. The damages should be compensatory and not punitive. *Id.*

6. The limitation imposed by the Act of March 3d 1863 for the bringing of suits was within the power of Congress. *Id.*

7. Where rights of individual citizens are not derived originally from the Constitution, but are part of the political inheritance from the mother country, the power of Congress does not extend to the enactment of positive laws for the protection of such rights, but only to the prevention of the states from violation of them. *United States* v. *Cruikshank*, 630.

8. But where a right is derived from the Constitution and affirmative legislation is necessary to secure it to the citizen, then Congress may pass positive laws for the enforcement of the right and for the punishment of individuals who interfere with it. *Id.*

9. These principles apply to the 14th Amendment equally with the rest of the Constitution, and there can be no constitutional legislation under that amendment for directly enforcing the privileges and immunities of citizens of the United States by original proceedings in the Federal courts, where the only constitutional guaranty of such privileges is that no state shall pass any law to abridge them, and where the state has in fact passed no such laws. *Id.*

10. The 13th Amendment gave Congress power to pass positive laws for doing away with slavery, but it did not give power to pass laws for the punishment of ordinary crimes against the colored race any more than against any other race. That power remains to the states. *Id.*

11. To constitute an offence of which Congress and the Federal courts can take cognisance under this amendment, there must be a design to injure a person or deprive him of his right, by reason of his race, color or previous condition of servitude. *Id.*

12. The 15th Amendment confers no right to vote. That is the exclusive prerogative of the states. It does confer a right not to be excluded from voting by reason of race, color or previous condition of servitude, and this is all the right that Congress can enforce. *Id.*

13. *Semble*, Congress may pass laws to protect this right under the 15th Amendment from individual violation, although the laws of the state are not repugnant to the amendment. *Id.*

14. But offences against the right to vote are not cognisable under the power of Congress, unless they have as a motive the race, color or previous condition of servitude of the party whose right is assailed. *Id.*

15. The *war of race*, whether it assumes the dimensions of civil strife and domestic violence, or is limited to private outrage, is subject to the jurisdiction of the United States, but outrage or violence, whether against colored people or white people, which lacks this motive and springs from the ordinary impulse of crime, is within the sole jurisdiction of the individual state, unless the latter by its laws denies to any race the full equality of protection. *Id.*

16. An indictment for conspiracy to interfere with the right peaceably to assemble, &c., or with the right to bear arms, or "to deprive certain citizens of African descent of their lives and liberties without due process of law," where the state has not passed any law interfering with such rights or denying equal protection to all its citizens, is not sustainable in a United States court under any law that Congress had power to pass. *Id.*

17. An indictment for conspiracy to deprive certain citizens of African descent of the free exercise and enjoyment of the right to the full and equal benefit of all laws and proceedings for the security of persons and property which is enjoyed by white citizens, does not in the absence of a specific alle-

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gation of a design to deprive the injured persons of their rights on account of their race, color or previous condition of servitude, charge any offence cognisable in a United States court. *United States* v. *Cruikshank*, 630.

18. *Semble*, such an indictment is also bad for vagueness. *Id.*

19. The Act of Congress of May 31st 1870, commonly called the Enforcement Act, so far as it assumes to regulate the right to vote, is beyond the scope of the 15th Amendment and void. And an indictment under it for conspiracy to hinder certain citizens of African descent in the exercise of their right to vote, cannot be sustained in a United States court without an allegation that the conspiracy was to hinder, &c., by reason of their race, color or previous condition of servitude. *Id.*

II. *Power of Legislature.* See PILOTAGE, 4.

20. The usual and ordinary legislation of the states regulating or prohibiting the sale of intoxicating liquors raises no question under the Constitution of the United States prior to the fourteenth amendment of that instrument. *Bartemeyer* v. *State of Iowa*, 220.

21. The right to sell intoxicating liquors is not one of the privileges and immunities of citizens of the United States which by that amendment the states were forbidden to abridge. *Id.*

22. But if a case were presented in which a person owning liquor or other property at the time a law was passed by the state absolutely prohibiting any sale of it, it would be a very grave question whether such a law would not be inconsistent with the provision of that amendment which forbids the state to deprive any person of life, liberty or property, without due course of law. *Id.*

23. While the case before us attempts to present that question, it fails to do it, because the plea, which is taken as true, does not state, in due form and by positive allegation, the time when the defendant became the owner of the liquor sold: and secondly, because the record satisfies us that this is a moot case, made up to obtain the opinion of this court on a grave constitutional question, without the existence of the facts necessary to raise that question. *Id.*

24. In such a case, where the Supreme Court of the state to which the writ of error is directed has not considered the question, this court does not feel at liberty to go out of its usual course to decide it. *Id.*

25. After a tax and the penalties which have accrued from its non-payment, have been repealed by statute, the tax may be reimposed but the penalties cannot. *Dixon* v. *The Mayor of Jersey City*, 390.

26. Penalties may be imposed for future delinquencies, as a means of collecting a tax, but to impose them for past omissions would be confiscation and not taxation. *Id.*

27. The Legislature cannot leave it to a board of commissioners to determine in what proportion the expense of opening a public avenue shall be imposed on the wards of a city. *Gaines* v. *Hudson County Com's*, 390.

28. The act of taxation must distribute the burden. *Id.*

29. A landowner who is injured by the laying out of an avenue need not wait until his property is actually appropriated before seeking redress. *Id.*

30. A court cannot pronounce a tax unconstitutional on the mere ground of injustice and inequality. *Weber* v. *Reinhard*, 522.

31. Where a municipal corporation purchased the franchises of a water company, one of which authorized it "to lay assessments on every dwelling in a street, where pipes are laid and collect the same," though it may have been unconstitutional for the company, it is not for the corporation. *Allentown* v. *Henry*, 522.

32. Such assessment is a local tax for a local benefit. *Id.*

33. An Act of Assembly must violate some prohibition of the State or Federal Constitution before it can be declared unconstitutional. *Butler's Appeal*, 522.

34. The legislative power of taxation may be delegated to a municipal corporation. *Id.*

35. Classes of property as well as classes of persons may be exempted. *Id.*

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36. An act authorizing the people of a town to decide whether they will subscribe its bonds in aid of a railroad is not in violation of the Constitution of New York and is binding. *Town of Queensbury* v. *Calver*, 652.

37. A state cannot impose a tonnage tax on vessels owned in foreign ports. *Peete* v. *Morgan*, 707.

38. The legislature of a state may vacate the office of a professor in one of its Universities, and appoint another, though such professor had been appointed under the authority of the state, for six years. *Head* v. *The University*, 707.

39. The power to regulate commerce between the states, was vested in Congress to secure equality in commercial intercourse, and not to interfere with private contracts. *Railroad Co.* v. *Richmond et al.*, 707.

40. The building of a bridge across the Mississippi at Dubuque under the Act of July 25th 1866, did not invalidate a contract previously made by a railroad, giving an elevator company the right to handle all grain brought to the river. *Id.*

41. Contracts valid when made continue valid notwithstanding a change in the business which led to their creation. *Id.*

III. *Taking Private Property.* See COURTS, 7.

42. The proceedings to determine the necessity for taking private property for public use, under the Constitution of Wisconsin, are adverse, and no final step is valid, if taken without *notice* to the property-owner. *Seifert* v. *Brooks*, 712.

43. A village charter which attempts to regulate such proceedings, but makes no provision for notifying the owner of the time and place of assembling of the jury, is unconstitutional. *Id.*

44. Where the act is void for failing to provide for notice, the fact that the property owner was present, but without taking any part, will not give the proceedings validity. *Id.*

IV. *Eminent Domain.*

45. The right of eminent domain is inherent in the government. *The Waterworks* v. *Burkhart*, 254.

46. It is not confined, but limited by the Constitution, and the limit is not upon the amount taken, but only requires compensation. *Id.*

47. Where the state has taken a fee simple and compensated the owner no abandonment of the use will reinvest the title in the owner, but it is otherwise if only an easement is taken. *Id.*

48. Where the state has taken a fee simple in lands for its canals the former owner cannot take ice from the canal. *Id.*

V. *Obligation of Contracts.* See INSOLVENT, 2.

49. It is settled law that charters of corporations, other than municipal, although the objects of the corporation may be *quasi* public, are contracts within the protection of the Federal Constitution. *P. W. & B. Railroad Co.* v. *Bower*, 174.

50. Any act having the effect to abridge or restrict any power or privilege vested by the charter, which is material to the beneficial exercise of the franchise granted, and which must be supposed to have entered into the consideration for the acceptance of the charter by the corporators, is an impairing of the obligation of the contract within the prohibition of the Constitution. *Id.*

51. An act prohibiting a railroad company from charging at a greater rate per mile for carriage of passengers or freight from place to place within a state, than for similar carriage through or beyond the state, no such power to regulate charges having been reserved in the charter, is unconstitutional and void. *Id.*

52. Such an act is not within the police power of the state. The legislature may regulate the exercise of the corporate franchise by general laws passed in good faith. *Id.*

53. Whilst a state, in the exercise of its undoubted power to prescribe forms of action and modes of procedure, may alter and modify the remedy as it existed at the time a contract was made, yet it is under a duty imposed by that clause of the Federal Constitution which prohibits the states from

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passing laws impairing the obligation of contracts, if it interfere at all, to leave in existence a remedy as efficient and substantial as that which subsisted when the contract was made: For the remedy being necessarily inseparable from the obligation, any law which clogs it with conditions and restrictions which materially impair its efficiency, and which did not exist when the contract was made, impairs necessarily the obligation. *Lasley* v. *Phipps*, 236.

54. The right to seize and sell by judicial process a debtor's property in satisfaction of a judgment against him, is a material part of the remedy for the enforcement of the contract on which the judgment is founded; and any law of a state which materially increases the amount of property exempt by law from execution over the amount allowed when the contract was made, impairs the remedy materially, and is therefore prohibited by the Federal Constitution. *Id.*

55. The exemption law of Mississippi passed in 1865 which increased the homestead exemption from 160 acres of land, not exceeding $1500 in value, to 240 acres regardless of its value, is, when applied to debts created before its passage, in violation of that clause of the Federal Constitution which prohibits states from passing laws impairing the obligation of contracts. *Id.*

CONTEMPT. See ATTORNEY, 3, 4, 5, 6. RECEIVER, 3.

1. A party will not be adjudged in contempt for any act before service of process alleged to have been disregarded. *Witter* v. *Lyon et al.*, 774.

2. A rule to show cause why party should not be punished for contempt may be obtained on *ex parte* affidavits, and may be discharged on same evidence. *Id.*

3. Rule may be discharged where party shows impossibility of compliance with order of court. *Id.*

CONTRACT. See CONSTITUTIONAL LAW, 41, 49.

1. A contract may be broken before the time for its performance arrives, by a party to it repudiating its obligation and declaring that he will not perform what he has bound himself to do. *Hancock* v. *N. Y. Life Ins. Co.*, 103.

2. The obligation of a contract is the legal duty of performing it according to its terms. *Lasley* v. *Phipps*, 236.

3. There can be no legal duty without a remedy or means of enforcing it; for without such remedy a contract is a mere imperfect obligation, depending for its performance upon the will of him from whom performance is expected. Parties therefore, who enter into contracts, must be considered as looking to the municipal law for a remedy to secure performance, and this law thus enters into and forms a part of the obligation. *Id.*

4. A contract to sell may be rescinded before acceptance unless there is an agreement on good consideration to the contrary. *Stitt* v. *Huidekoper*, 327.

5. Is not to be governed by what either party understood unless such understanding was induced by the conduct of the other party. *Kennedy & Bailey* v. *Railroad Co.*, 327.

6. A contract giving certain individuals the exclusive right to transport certain freight over a railroad, is void from considerations of public policy. *Union Locomotive Express Co.* v. *Erie Railway*, 390.

7. A contract in violation of the public policy of a state will not be enforced though it has been recognised by the courts of another state. *Id.*

8. An offer of compromise is not binding unless accepted. *Id.*

9. The consideration for an accepted compromise is the release of the original contract. *Id.*

10. The Act of June 1862 requiring contracts for military supplies to be in writing, is not infringed by the proper officer accepting them after the stipulated time, nor is his verbal agreement to extend the time invalid. *Solomon* v. *United States*, 588.

11. If the government receives them there is an implied contract to pay their value. *Id.*

12. A party may recover damages for refusal by defendant to allow him to complete a contract, for building a house, where he alleges willingness on his part to go on. *Black* v. *Woodrow & Richardson*, 774.

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13. One who has entered into a contract under a *bonâ fide* mistake of facts may rescind, if third parties will not be prejudiced. *Johnson* v. *Parker*, 776.

14. This is not the case when several creditors have compromised their debtor's claims, relying on the mutual agreement of one another. *Id.*

15. In such case there is a *conclusive presumption* of law, that setting aside the settlement as to one, would be injurious to the others. *Id.*

16. It is not necessary that a formal promise should have been made, to entitle creditors to the protection of this rule. *Id.*

CONVERSION.

1. A naked power of sale in executors works no conversion of the land into personalty, and until sale the title is in the heirs and the husband of one of them is entitled to curtesy. *Romaine* v. *Hendrickson's Ex'rs.*, 328.

2. Such tenant by the curtesy and the son of the deceased daughter are proper parties to a bill against executors, to set aside a sale on the ground of fraud. *Id.*

CORPORATION. See CONSTITUTIONAL LAW, 49.

1. With reference to their power to take and hold real estate corporations may be classified as follows:—

1st. Those whose charter forbids them to hold.

2d. "Those whose charter is silent, may hold if their object cannot otherwise be accomplished.

3d. Those whose charter authorizes them to hold for some purposes.

4th. Those whose charter confers upon them a general power to acquire and hold it. *Hayward* v. *Davidson*, 254.

2. Counties are *quasi* corporations and fall within the third class above given. *Id.*

3. Whether real estate has been acquired by a corporation for an authorized use, can only be inquired into by the state. *Id.*

4. Grants of new and extraordinary powers to a private corporation must be construed strictly. *Township of Greenwich* v. *Easton & Amboy R. R.*, 330.

5. In the management of the property, business or affairs of a corporation by the president or directors thereof, they occupy a relation to the stockholders similar to that of trustees to *cestuis que trust*. *Commissioners* v. *Reynolds*, 376.

6. Upon a former trial between the same parties the counsel for the defendants, a corporation, had admitted their incorporation and that certain persons were officers of the company at a certain time, and the plaintiff had therefore introduced no proof upon these points. A second trial was had, previous to which the defendants gave the plaintiff notice that they withdrew their admission of the former trial. Upon the second trial the plaintiff, having given notice to the defendants to produce the records of the corporation in court, which they neglected to do, offered in evidence the admission of their counsel upon the former trial. *Held*, 1. That the admission did not bind the defendants in such a way as to estop them from denying on the second trial the facts admitted on the first. 2. But that the admission was admissible in evidence, with all the circumstances in which it was made, as tending to prove the facts admitted. *Perry* v. *Water-proof Manufg. Co.*, 430.

7. Has no concern in nor control over the business of its members not invested in its own funds. *Mason* v. *Fruele et al.*, 454.

8. The legislature could not compel a society to be incorporated without its assent. *Id.*

9. Only unanimous consent can bind any member of an unincorporated company. *Id.*

10. Even absolute identity in the membership of a society and of a corporation would not merge the society in the corporation. *Id.*

11. The burden of proving a merger is on those seeking to establish it. *Id.*

COSTS.

1. Objection to taxation of costs must in all cases be first made before the taxing officer. *Hawkins et al.* v. *Northwestern R. Co.*, 647.

2. On granting *continuance* it is within the discretion of the Circuit Court to require as a condition, the payment of a *gross sum* as costs. *Id.*

COUPON. See MUNICIPAL CORPORATION, 30.

COURTS. See BANKRUPTCY, 39.

1. An action by an assignee to set aside a conveyance as a fraud on the Bankrupt Act, cannot be entertained by a state court. *Gilbert* v. *Priest*, 62.

2. State courts have concurrent jurisdiction with the United States courts, of only such actions as arise incidentally from Acts of Congress. *Id.*

3. The acts for which a state court may set aside a conveyance are such as are *malum in se*. *Id.*

4. If a conveyance is fraudulent against creditors, the courts of New York have jurisdiction to declare it void. *Id.*

5. When the political authorities of a state have actually claimed and exercised jurisdiction over a particular locality, the courts of the state are thereby concluded, and will respect such decision, and act accordingly, without questioning the validity of such claim. *State* v. *Wagner*, 106.

6. The prisoner was not wronged by the instructions given in this case that proof that the crime was committed on the island called Smutty Nose, is equivalent to proof that it was committed within the county of York, and would make the crime properly cognisable by the court sitting in that county. That instruction was correct. *Id.*

7. A proceeding to condemn property under an Act of Congress is a "suit of a civil nature at common law or in equity," within the meaning of the Judiciary Act. *United States* v. *Block*, 124.

8. The construction of that clause cannot be limited to such suits as were known at the time of its passage, the grant is prospective. *Id.*

9. The clause was used in contradistinction to admiralty and criminal cases. *Id.*

10. Congress has power to authorize Federal courts to condemn property. *Id.*

11. Proceedings instituted by the Secretary of the Treasury are on the part of the United States. *Id.*

12. An action cannot be removed from a state court into the Circuit Court of the United States under the Act of Congress of 1867, c. 196, after a trial on the merits, although such trial has resulted in a disagreement of the jury. *Galpin* v. *Critchlow*, 139.

13. The Supreme Court has jurisdiction by writ of error over judgment of state court, where the writ is to highest court in which a decision could be had, even though it be an inferior court of the state. *Miller* v. *Joseph*, 335.

14. In the construction of the statutes of a state, the Supreme Court follows the decisions of the state courts, whatever may be their opinion. *Walker* v. *State Harbor Com'rs.*, 335

15. An action in the state courts may be removed into the courts of the United States, under the Act of Congress of 1867, c. 196, at any time before the final trial in such action; and a trial before the jury and failure to agree upon a verdict, is not to be regarded as such a final trial. *Clark* v. *Railway Co.*, 421.

16. Where a case is submitted in the Circuit Court without a jury, under the Act of Congress of March 3d 1865, the Supreme Court will not review the finding, if it is general. *Cooper, Executor*, v. *Omohundro*, 654.

17. A mere report of the evidence is not such a special finding as will authorize the Supreme Court to pass upon the judgment of the Circuit Court. *Crews* v. *Brewer*, 655.

18. It is not competent for the Circuit Court to determine an issue of fact, without an agreement to waive a trial by jury. *Morgan's Executor* v. *Gay*, 655.

19. The Act of March 2d 1867, for removal of cases from state to a Federal court, only authorizes such removal before final judgment. *Stevenson* v. *Williams*, 715.

20. Where the state court goes on to adjudicate the case after removal, it is a usurpation, and resistance by the party against whom judgment is rendered, is no waiver of his right to contest the jurisdiction of the state court. *Insurance Co.* v. *Dunn*, 716.

21. The language, "any time before the final hearing or trial," in the Act

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of 1867, is not of the same import, as "at any time before the trial or final hearing," in the Act of July 27th 1866. *Insurance Co.* v. *Dunn*, 716.

COVENANT. See BANKRUPTCY, 41.
1. Equity will enforce a covenant made with a vendee, that in case of subsequent conveyances by the vendor the purchasers shall be restricted in building, though there is no privity between the parties and such covenant creates no easement. *Kirkpatrick* v. *Peshine*, 54.
2. Nor will it refuse to restrain a violation of the agreement because the inconvenience is only slight. *Id.*
3. Covenant for rent will not lie against lessee where lease is by deed-poll, signed only by lessor. *Johnson* v. *Muzzy*, 55.
4. A covenant in a lease to pay the yearly rent of six pence sterling per acre, in current money of the state of New York equal in value to money of Great Britain, does not bind the lessee expressly to pay in gold or silver. *Stranaghan* v. *Youmans*, 255.
5. Under such a covenant the lessor is bound to accept the notes of the United States, but the lessee must pay enough to make the number of dollars paid, equal in value to the same number in money of Great Britain. *Id.*
6. The rent may be paid dollar for dollar in gold and silver coin of the United States. *Id.*
7. A covenant that grantee, his heirs and assigns, shall maintain a fence on line between his land and grantor's, will not, when the land is subdivided, run with lots that do not abut on the line. *Welsh* v. *Barton*, 647.
8. Where one having no title to land conveys it with covenant of warranty and subsequently acquires title it enures to his grantee. *Cross* v. *Martin*, 775.
9. Parties in successive deeds of a chain of title of the same name are presumptively the same persons. *Id.*
10. Deed from G. of H. to G. Jr. of H. is presumed from father to son. *Id.*

CRIMINAL LAW.
I. *General.*
1. Where an indictment is founded upon a statute containing provisos and exceptions, it is unnecessary to allege that the party indicted is not within the exceptions, or to negative the provisos. *State* v. *Cassady*, 55.
2. False explanations, made by an accused person, of suspicious facts, are proper to be submitted to the jury. *Walker* v. *State*, 454.
3. The refusal of the court, in a criminal case, to charge that the evidence must satisfy the jury beyond a reasonable doubt of every fact necessary to constitute the offence, is error. *Id.*
4. An examination before a magistrate on a criminal charge is not invalidated by a continuance to the 22d of February, and after taking testimony on that day being continued to the 23d, although by law the 22d was *dies non juridicus*, and assimilated to Sunday. *Hamilton* v. *The People*, 679.
5. Where counts in a criminal information are misjoined, the court is not bound to quash the information on motion, if the counts relate to one transaction, and the court can regulate the evidence by confining it to that transaction and preventing the surprise or confusion of the defendant. *Id.*
6. The phrase, the jury in criminal cases are judges of the law as well as the facts, is true so far as that the jury must render a general verdict on their consciences as to the legal and actual guilt of the accused, and cannot be compelled to separate the law and the facts. But the duty of the jury is the same in kind in criminal as in civil cases, and the fact that an acquittal whether right or wrong is not reviewable, does not lessen the duty of the jury to obey the law as laid down by the judge, without regard to their personal opinions as to what the law is or ought to be. *Id.*
7. The discharge of the jury without the consent of the defendant in a criminal cause, is equivalent to a verdict of acquittal. *Hines* v. *State*, 775.
8. One who participating in the felonious intent, is present aiding or abetting a murder or other felony, is a principal. *Warden* v. *State*, 776.
9. The actual or constructive presence of the accused is not necessary to constitute the offence of aiding or abetting under the 36th sect. of the Crimes Act of Ohio. *Id.*

CRIMINAL LAW.

II. *Murder.* See ERROR AND APPEAL, 2.

10. All parts of the state are included within the body of one or another of the several counties into which the state is divided. *State* v. *Wagner*, 106.

11. When murder has been done in an unincorporated place, publicly and commonly known by name, in any one of these counties the venue is well laid, and the place sufficiently described, if the crime be charged in the indictment as having been committed at (insert the name by which the place is commonly known) a place within the county of (name of county) aforesaid, in the absence of anything tending to show that the prisoner would be embarrassed in the preparation of the defence for want of a more particular description. *Id.*

12. When there is no controversy as to the precise spot on the face of the earth where the crime was committed, and it appears by ancient charters, legislative enactments and judicial records that the political authorities of the state and county have heretofore claimed and exercised jurisdiction over the locality in question, the question of jurisdiction is one of law for the court, and the defendant cannot in any stage or form of pleading rightfully claim to have it submitted to the jury as one of fact, for their determination. *Id.*

13. Upon such a question the presiding judge in addition to the matters of which he will take judicial notice, such as legislative enactments, ancient charters, and geographical position, may refresh his recollection and guide his judgment by reference to the records of the courts in the county where he sits, general histories of deceased authors of established reputation, and the records of the census of the inhabitants of the county taken under the laws of the United States by its officers. *Id.*

III. *Burglary.*

14. On an indictment framed under § 3695 of the Revised Code of Alabama, a count which charges that the defendants "broke into and entered" a certain described building of the class included in that section, "and feloniously took and carried away" certain enumerated articles of personal property of a specified third person, is a count for grand larceny only. To constitute a good count for burglary there must be an averment that the breaking and entry were "with intent to steal or to commit a felony." *Bell* v. *The State*, 752.

15. A count charging that the defendants "broke into and entered" a certain building therein described, of the class included in § 3695 of the Revised Code, "with the intent to steal," charges burglary only. There can be no conviction of grand larceny under such a count. *Id.*

16. Under a count charging that the defendants "broke into and entered a building which it describes, of the class included in § 3695 of the Revised Code, "with the intent to steal, and feloniously took and carried away" certain enumerated articles of personal property of a specified third person, "of the value of more than one hundred dollars," there may be a conviction of either or both of the offences charged. *Id.*

17. Burglary and grand larceny being under the provisions of the Revised Code, distinct felonies of the same grade and subject to the same nature of punishment, are not governed by the doctrine of merger. *Id.*

18. When there is a conviction of both burglary and larceny, charged in the same count, but one punishment should be awarded. *Id.*

19. A verdict finding the defendants guilty of burglary on the trial of an indictment, charging in separate counts both burglary and grand larceny, is tantamount to an acquittal of the grand larceny, and thereafter expunges that charge from the indictment. *Id.*

20. An acquittal thus obtained is final, and cannot be impaired by a judgment rendered by an appellate court, on defendants' appeal, reversing the conviction for burglary and remanding the cause for further proceedings. *Id.*

21. An acquittal of grand larceny, resulting from proceedings on the first trial, being final, takes away any legal foundation for a verdict on the second trial, finding the defendants guilty of grand larceny. Such a verdict i a nullity. *Id.*

CRIMINAL LAW.

22. The rendition by the jury of a void verdict is no legal ground for discharging them from their deliberations. The discharge of a jury, without the consent of the defendants, for no other reason than the rendition of a void verdict, is tantamount to an acquittal of all the charges upon which the jury were prevented from passing by their discharge. *Bell* v. *The State*, 752.

23. The defendants in the case at bar having been acquitted of grand larceny on the first trial, and the court having discharged the jury on the second trial, without the consent of defendants, for no other legal reason than the rendition of a void verdict, whereby the jury were prevented from passing on the charge of burglary, the only one remaining in the indictment, it was held that the whole case was thereby ended, and the court below having refused to discharge the defendants, the Supreme Court on their appeal, reversed the judgment and sentence of the court below, and ordered their discharge. *Id.*

CURTESY. See HUSBAND AND WIFE, II.

CUSTOM. See PARTNERSHIP, 1.

1. Where a contract to ship goods at a certain rate per lb. or at the current rates of the day, did not specify in what the rates were to be computed, evidence of a custom to compute them in gold is admissible. *Mackenzie* v. *Schmidt*, 448.

2. Custom may also be given in evidence to show that certain sums for primage or average were to be added to the rates expressed. *Id.*

3. Such custom being provable in an action on the contract there is no ground for the jurisdiction of a court of equity. *Id.*

DAM. See EASEMENT, 1.

DAMAGES. See CONSTITUTIONAL LAW, 5; CONTRACT, 12; EQUITY, 6; ESTOPPEL, 8; HUSBAND AND WIFE, 43; MUNICIPAL CORPORATION, 33; TRESPASS, 9; VENDOR AND PURCHASER, 3.

1. A negro apprentice cannot recover damages from his master, for enlisting him as a substitute for his son, who had been drafted. *Gent* v. *Cole*, 256.

2. Evidence of the price of substitutes is not admissible, as furnishing any criterion for assessing damages. *Id.*

3. Where a breach of contract has been compromised, the only damages that can be recovered are the terms of the compromise. *Union Locomotive Co.* v. *Erie Railway*, 391.

4. An agreement in the sale of property that in case of default any payments made shall be retained, will not be enforced by the law as stipulated damages. *Johnston* v. *Whittemore*, 391.

5. Where property is tortiously taken the owner is entitled to full compensation in damages. *Dalton* v. *Landuhn*, 391.

6. A subsequent sale to the trespasser on legal process cannot be shown to reduce the damages. *Id.*

7. It is different if the sale is to some other one than the trespasser. *Id.*

8. No general rule can do exact justice in all cases of failure to deliver property to the vendee. *Chadwick* v. *Butlers*, 455.

9. The vendee is entitled to the value of the goods at the time they should have been delivered. *Id.*

10. It is error to allow evidence of the highest market price between the time of sale and bringing suit. *Id.*

11. The measure of damages where vendor fails to comply with his contract is difference between the contract and market price at time of breach. *McHose* v. *Fulmer*, 523.

12. When the article cannot be obtained, the measure is the actual loss vendee sustains. *Id.*

13. On refusal of vendee to accept goods sold him, the damages are difference between contract and market price at time of refusal. *Laubach* v. *Laubach*, 523.

14. Where contract is that vendee may rescind, damages are price paid and interest. *Id.*

15. A contractor for transportation cannot recover damages for the loss of

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profits by failure of the United States to furnish the amount of freights they gave him notice they would require. *Buckley* v. *United States*, 588.
16. He is entitled to recover for his extra expense. *Id.*
17. Prospective damages arising from loss of time, doctoring, &c., if reduced to their present worth, may be given for personal injuries. *Fulsome* v. *Town of Concord*, 714.

DEBTOR AND CREDITOR. See ACTION, 5, 6. STOCK, 1.
I. *Generally.*
1. To entitle a poor debtor to chancery of his bond the justices must be selected according to law and have jurisdiction over his disclosure. *Hackett* v. *Lane*, 123.
2. The only bars to an action on the bond, are payment of debt, surrender of debtor, or disclosure. *Id.*
3. Pleas of performance estop debtor from claiming, that in consequence of non-conformity to statute, bond is only good at common law. *Id.*
4. A poor debtor's bond, not according to statute in its approval, is good only at common law. *Smith* v. *Brown*, 123.
5. No apprisal of demands disclosed under such bond is necessary unless required by the terms of the bond. *Id.*
6. The record of the justices hearing such disclosure is sufficient of itself. *Id.*
7. Where creditor takes the drafts of a third person, but not in payment, they cannot affect his rights so long as they remain unpaid. *Allen* v. *Clark*, 194.
8. They are to be deemed simply as collaterals and may be prosecuted to judgment without prejudicing creditor's claim against principal debtor. *Id.*
9. A creditor taking a chose in action as collateral security for a pre-existing indebtedness is not a purchaser for value. *Ashton's Appeal*, 395.
II. *Sale or Conveyance Fraudulent as to Creditors:* See HUSBAND AND WIFE, 31.
10. A voluntary conveyance by a debtor to the wife is void as against an antecedent creditor. *Phelps* v. *Morrison*, 56.
11. A purchaser under a void deed, for valuable consideration and without notice, will be protected against an antecedent creditor to amount of purchase-money. *Id.*
12. A sale of furniture by the vendor, who occupies the same house as the vendee, with no transfer other than a bill of sale, is void as against his creditors, under the Statute of Frauds of Missouri. *Allen* v. *Massey*, 329.
13. When the gift of land by a father to his daughter is assailed for fraud, and his creditors are all judgment creditors subsequent to the gift, the fraud is one of fact, and cannot be determined by the court. *Hendon* v. *White*, 455.
14. Such gift is not necessarily void against existing creditors. *Id.*
15. The retention of possession of stock sold to a creditor, though a badge of fraud, is susceptible of being overcome by proof that debtor acted as agent of vendee. *Moug* v. *Benedict*, 455.

DECEDENTS' ESTATE. See INSURANCE, 31.
1. Unharvested crops go to the devisee of the land and not to the executor. As against the heirs at law they go to the executor; but as against a devisee they do not, unless it appear by the will that the testator so intended. *Dennett* v. *Hopkinson*, 359.
2. Hay in a barn passes under a bequest of "all the household furniture and other articles of personal property in and about the buildings." *Id.*

DEED.
1. A deed should be attested by witnesses or acknowledged by the maker, to make it complete. *Hendon* v. *White*, 456.
2. A subsequent acknowledgment has the effect of a ratification and relates back to the date of delivery. *Id.*
3. A deed purporting to have been executed by the president of a railroad as authorized by the Act of 1852 of Ohio, if objected to, cannot be given in evidence without proof of execution. *Walsh* v. *Burton*, 654.

DIVIDEND. See HUSBAND AND WIFE, 37, 38. TAXATION, 5, 7.

Dividends belong to the persons owning the stock at the time they are actually declared. *Brundage* v. *Brundage*, 124.

DIVORCE. See HUSBAND AND WIFE, I.

DOCK. See RIPARIAN OWNER, 8, 9.

DOMICIL.

1. To constitute a change, there must be intention to make, and the fact of making. *Parsons* v. *Bangor*, 256.

2. The acts and intentions of the wife do not affect the domicil of the husband. *Id.*

DOWER. See HUSBAND AND WIFE, II.

EASEMENT.

1. Merely maintaining a dam for twenty years, does not give a prescriptive right to flow land as high as it can be flowed by that dam; to acquire such right it must have been done with sufficient frequency during the twenty years to have given landowner notice that the right was being claimed. *Gilford* v. *Winnipiseogee Lake*, 56.

2. Where a servitude is continuous and apparent a purchaser at a private or judicial sale takes subject to it. *Cannon* v. *Boyd*, 456.

3. It makes no difference whether reference is made to the servitude in the deed of the dominant tenement or not. *Id.*

4. Nor does the expectation of the agent who purchases the dominant tenement, affect the principal's title. *Id.*

EJECTMENT. See FRAUD, 5.

1. Plaintiff in ejectment is only required to show that the title and right of possession was in him *at the commencement of the action*. *McLane* v. *Bovey*, 648.

2. Under *general denial*, defendant cannot show that he has acquired title since the commencement of action. *Id.*

3. A judgment for plaintiff does not *bar a subsequent action* by defendant to assert his title so acquired. *Id.*

4. The person named in a certificate of entry of land at a United States land office has "a valid subsisting interest" and may maintain ejectment therefor. *Id.*

5. It is only a determinable fee at most, the certificate may be cancelled, and the title thus revests in the United States. *Id.*

ELECTION. See WILL, 2, 5.

1. The principles of public policy which make void all contracts tending to the corrupting of elections held under authority of law, apply equally to what are called primary or nominating elections, although these are mere voluntary proceedings of the voters of certain political parties. *Strasburger* v. *Burk*, 607.

2. A contract to procure a nomination for a public office by providing liquors, &c., to voters, is void, and the courts will not aid either party in its enforcement. *Id.*

ENEMY. See WAR, 1, 2.

EQUITY. See COVENANT, 1. HOMESTEAD, 1. HUSBAND AND WIFE, 30. TAXATION, 1, 2. VENDOR AND PURCHASER, 11.

1. Chancery will not entertain bill to impeach a judgment at law for mere irregularity. *T. of Wardsboro* v. *Whittingham*, 57.

2. Nor to try the truth of an officer's return by parol testimony. *Id.*

3. Will reform a deed made by mistake of both parties, and protect by decree the interests of parties holding under it. *Burr* v. *Hutchinson*, 257.

4. Will not aid a creditor to reach his debtor's property, unless the debt is clear, and there exists some special grounds for the interposition of the court. *Board of Public Works* v. *Columbia College*, 327.

5. If a change in the amount of damage done to land taken by a railroad, occurs after the report of the commissioners, equity will relieve, as there is no remedy at law. *Carpenter* v. *Easton & Amboy R. R.*, 328.

EQUITY.

6. The Court of Chancery has power in such case to determine the amount of compensation. *Carpenter* v. *Easton & Amboy R. R.*, 328.

7. Courts of equity have authority to revive suits on death of the parties independent of enactments governing the law courts. *Ex parte Kirtland*, 451.

8. In a suit at law to administer equity the judge sits as chancellor and he must be satisfied as to sufficiency of evidence. *Faust* v. *Hass*, 456.

9. If evidence be vague, uncertain or doubtful he must withdraw it from the jury. *Id.*

10. Will not restrain proceedings in another equitable suit in the same court. *Dayton* v. *Relf*, 777.

11. The action to foreclose tax title under ch. 22 of Wisconsin Laws, is equitable, and if owner is entitled under ch. 89 to five years to redeem, he must set it up in defence in same action. *Id.*

ERROR AND APPEAL. See ADMIRALTY, 7, 8. ARBITRATION, 4. CRIMINAL LAW, 3. DAMAGES, 10. INSURANCE, 13. PLEADING, 5. RECEIVER, 5.

1. Where the jury decide a fact erroneously it must be corrected by appeal, and cannot be reviewed in a second suit between the same parties. *Marcellus* v. *Countryman*, 58.

2. A charge that, if defendant "in the heat of blood and upon sufficient provocation," threw deceased down stairs, the offence was manslaughter, is not erroneous, where subsequent instructions showed, "sufficient" was used as equivalent to "great and sudden." *State* v. *Murphy*, 123.

3. An appeal lies to an order refusing to strike an amended complaint from the files. *Supervisors of Kewaunee Co.* v. *Decker*, 647.

4. It is error to refuse to charge "that the jury are not to allow any feeling of sympathy for the plaintiff to influence the verdict." *Fulsome* v. *Town of Concord*, 714.

ESTATES.

A settlement in trust for one, without words of limitation, and if he should die without issue, then over, passes only a life estate, notwithstanding a subsequent will by the settlor confirming the settlement. *Middleton* v. *Barker*, 589.

ESTOPPEL. See HIGHWAY, 2. MORTGAGE, 15. MUNICIPAL CORPORATION, 36.

1. In divorce a former adjudication need not be specially pleaded, it may be given in evidence at the trial. *Blain* v. *Blain*, 57.

2. Dismissing a petition for divorce in New Hampshire for want of proof, no bar to granting divorce in New York. *Id.*

3. A judgment in a former action is no bar to second action for same cause, if the latter had not then accrued. *Marcellus* v. *Countryman*, 57.

4. Parol evidence is admissible to show that the second demand was not recovered in first action. *Id.*

5. No rule is more necessary to enforce good faith than that which estops a person from enforcing claims which he has induced others to suppose he would not rely on. *Faxton* v. *Faxon et al.*, 453.

6. Merely endorsing a mortgage with the word "cancelled" and signing the mortgagee's initials, amounts to nothing but evidence of intention, unless there is an actual agreement with the mortgagor on which he has relied. *Id.*

7. Husband and wife having recovered judgment against a town for injuries caused to wife by defect in highway, in a suit for loss of wife's services, the town is estopped to deny facts found against it in former action. *Lindsey* v. *Town of Danville*, 713.

8. If the jury think the sum paid for necessary labor substituted for the wife's services, is the measure of a just compensation they may find damages to that amount. *Id.*

9. Whether interest is recoverable in an action of tort or not, the jury may consider *time* in fixing damages. *Id.*

10. Evidence to show that the wife was in ill health prior to the injury is inadmissible. *Id.*

EVIDENCE. See ADMIRALTY, 9. BILLS AND NOTES, 4, 6. CRIMINAL LAW, 2. DEED, 3. ESTOPPEL, 4, 10. STAMP, 3.

I. *Generally.*

1. In trespass evidence is admissible to show that the deed for the *locus in quo* though dated before was not delivered until after the issuing of the writ. *Maxwell* v. *Mitchell*, 128.

2. Evidence reported upon a motion for new trial, which has been overruled by consent, cannot be considered in hearing upon exceptions. *Id.*

3. Of fraud is not required to be more direct and positive than facts tending to the inference of it. *Rea* v. *Missouri*, 327.

4. Evidence *dehors* the writing may be given, where any doubt arises upon the true sense and meaning of the words of the written contract. *Newark & Hudson Railroad* v. *Sanford*, 391.

5. Courts will take judicial notice of the date of resumption of mail service between two towns after the war. *Clay, Administrator*, v. *Potton*, 392.

6. They will not take notice without other proof that the late war was sufficient to prevent notice of dishonor to an endorsee, during its continuance. *Id.*

7. The records of the Post-office Department afford evidence of the restoration of mail service to the seceding states. *Id.*

8. An account sale unless proved in the ordinary way can only be received in evidence on the ground of contract. *Coes* v. *Nash*, 451.

9. Where the date of a sale, attacked for fraud, is material, evidence that some months after its date, the vendor called on a lawyer to write a transfer of the goods, is competent and relevant. *Moug* v. *Benedict*, 455.

10. Identity of name is evidence of identity of persons. *Id*, 457.

11. The possession of the record of a judgment rendered by a justice gives no room for the presumption that the holder is the party plaintiff. *Bennett* v. *Libheart*, 457.

12. It cannot be assumed as a legal presumption that where the initials and family name are the same the persons are identical. *Id.*

13. Proof that witness had been in correspondence with writer of letter offered in evidence for more than a year, and thought the signature genuine, is sufficient to receive it. *Smith* v. *Amazon Ins. Co.*, 589.

14. Congress may prescribe the manner in which copies of the records of the departments may be authenticated. *McLane* v. *Bovey*, 649.

15. Parol evidence is admissible to explain a receipt which does not constitute a contract. *Randall* v. *Kelsey*, 649.

16. The receipt of an internal revenue collector is proper evidence to show payment of the tax. *Id.*

17. While evidence is admissible to show motive in the accused, yet where the crime charged was the burning of a barn belonging to himself, in order to get the insurance, the record of a suit in equity against him to recover the barn, &c., where he had filed an answer denying the complainant's equity, &c., was too remote to be admissible for the purpose of showing motive. *Hamilton* v. *The People*, 679.

18. Where evidence is circumstantial, a wide latitude should be allowed to defendant in cross-examination to show the whole bearing of the facts alleged. *Id.*

19. Where a co-defendant in a criminal case turns state's evidence and has tried to convict others by proof also convicting himself, he will be held to have waived all privilege of refusing to answer as to any facts bearing on the issue. And this waiver extends to all communications made to his counsel, so as to make both himself and his counsel compellable to disclose such communications. *Id.*

20. Where a party asking a question gets an answer that is not responsive but which would have been admissible in answer to a question calling for it, the other party has no right to object to it and have it stricken out of the testimony. *Id.*

21. Evidence to impeach a witness must be confined to his reputation for veracity, but the attacking witness having shown his knowledge on that point may be asked if he would believe the other on oath. *Id.*

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22. The Supreme Court of the United States does not take judicial notice of the orders issued by a military commander. *Burke* v. *Miltenberger*, 709.

23. It is not sufficient for a defendant, who is testifying to what a deceased witness proved on a former trial, to testify *substantially*, he must give all. *Black* v. *Richardson*, 777.

24. A receipt in full of a demand, is *primâ facie* a perfect defence. *Guyette* v. *Town of Bolton*, 777.

II. *Privileged Communications.*

25. To make communications to counsel privileged, they must be made to them confidentially as counsel in the case in which they are made. *Earle* v. *Grout*, 709.

26. The facts that make them privileged must be proved, and the burden of proof is on him who seeks to exclude them. *Id.*

27. The declarations of an agent are admissible against his principal, if made in the execution of the agency. *Id.*

III. *Admissions, Declarations,* &c. See CORPORATIONS, 6.

28. It is competent for the assistant United States marshal who took the census for the district, and made the return to the office of the clerk of the courts for the county, when the record does not show the specific locality where the individuals enumerated resided, to testify as to their place of residence. *State* v. *Wagner*, 106.

29. The outcries of a person deceased made during the perpetration of the assault which results in death, or upon the approach of the assailant, are competent evidence upon the trial of a party charged with the murder of such person, and may be considered by the jury with other circumstances and testimony upon the question of the identity of the accused. *Id.*

30. The outcries of another person who was murdered by the same party a few minutes previously, during the perpetration of one and the same burglary, but on another part of the premises, are admitted under like circumstances for the same purposes upon such trial. *Id.*

31. Such exclamations are competent as part of the *res gestæ*. *Id.*

32. Moreover their admission may be distinctly justified for the same reasons which are held to justify the admission of dying declarations. *Id.*

33. The contents of the prisoner's pockets found when he is arrested may be put in evidence when there is testimony tending to show that they or a portion of them came from the recent possession of the deceased or from the locality of the crime. *Id.*

34. Articles which a witness identifies as the property of the prisoner, and in his possession shortly before the crime was committed, when found shortly after its perpetration, at the house where the crime was committed, may be offered in evidence. *Id.*

35. The confession of a prisoner induced by threats or promises is inadmissible. *Nicholson* v. *State*, 194.

36. The *onus* of showing that a confession was not made by inducement is on the prosecutor. *Id.*

37. Admissibility of confession is to be determined by the court and not by the jury. *Id.*

38. Where two are interested in a transaction the acts and statements of either in regard to it may be put in evidence as showing the *quo animo*. *Beebe* v. *Knapp et al.*, 457.

39. Where a witness dies the notes of his testimany before a justice are admissible. *Brown* v. *Commonwealth*, 523.

40. The dying declarations of a wife are not evidence on the trial for the murder of her husband. *Id.*

41. One condition on which the declaration of deceased persons in regard to boundaries is received, is that they had knowledge of them. *Hadley* v. *Howe*, 649.

42. Such knowledge must be proved. *Id.*

IV. *Experts.*

43. The admission of a lawyer who had no more experience than lawyers

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generally to testify as an expert in a question of handwriting was erroneous. *Ellingwood* v. *Bragg*, 57.
44. The ruling of a judge at *nisi prius* as to an expert will not be revised. *Id.*
45. The opinions of persons not witnesses through whose hands a treasury note has passed, as to its genuineness, are not admissible in evidence in a suit brought by one who has taken such note to recover its value. *Atwood* v. *Cornwall*, 230.
46. The statement of a fact by one of the parties, in the presence of the other and not denied, is admissible as evidence of the fact so stated. *Id.*
47. Bankers are competent to testify as to the genuineness of a treasury note. *Id.*
48. When the matter of inquiry is such that inexperienced persons are unlikely to prove capable of forming a correct judgment upon it, the opinion of experts is admissible. *Davis* v. *The State*, 255.
49. The evidence of medical experts is admissible to show how in their opinion certain wounds were inflicted upon the head of a murdered man. *Id.*
50. The provision in Wisconsin Statutes that no physician shall testify unless he has a diploma, only applies when such a person is called as an expert. *Montgomery* v. *Town of Scott*, 777.
51. A physician examined as an expert may testify as to the probable effects of injuries upon the future health. *Id.*
52. A physician testifying that both bones of the plaintiff's leg were broken is not giving an opinion as an expert. *Id.*

EXECUTION. See CONSTITUTIONAL LAW, 54, 55. WAR, 2.
1. A constable's sale of personal property which is not present and subject to inspection is invalid. *Gaskill* v. *Aldrich*, 195.
2. Where an execution-creditor purchases at execution-sale, and his judgment is subsequently reversed and restitution awarded, the title revests in the execution-debtor, but where, before the reversal, the execution-creditor conveys to a stranger who purchases in good faith, he will hold the title unaffected by the reversal. *Vogler* v. *Montgomery et al.*, 244.
3. An exception to this rule is where the property sold is one that is exempt from sale by the Homestead Act. In such case the purchaser acquiring no title can convey none even to a stranger. *Id.*
4. Individual partners are entitled to exemption out of partnership assets. *Howard* v. *Jones and Starke*, 457.
5. The right of exemption is an incident of ownership as long as the owner chooses to exert it and the property is within the control of the court. *Id.*
6. A widow who supported herself and daughter by keeping a boarding-house at G. in Connecticut, owning a quantity of furniture suitable for a boarding-house, took a furnished house for a year in the city of New York, and went there to keep boarders, intending to return to G. at the end of the year and resume her business there. Her furniture was stored in the meantime in G. and while so stored was attached by a creditor. *Held*—
(1.) That the furniture, if otherwise exempt, did not become open to attachment by reason of its being stored and not in actual use.
(2.) That the furniture was not exempt as being necessary for the use of her boarders, nor on the ground that the boarders were a part of her family.
(3.) That the inquiry is, what was necessary for the personal comfort of the family, as such; but that the term "family" in this case was not limited to the mother and daughter alone, but, as she was keeping boarders, might properly include a servant, and in any case would include a visitor, or a dependent relative who was living in the family.
(4.) That in determining what was necessary household furniture, her occupation might properly be considered, and if her keeping boarders made it necessary for her to have more furniture for her personal use, as an additional bureau, or other like convenience, such additional furniture would be exempt. *Weed* v. *Dayton*, 603.
7. A debtor cannot by an executory contract, such as a stipulation in a promissory note, waive the benefit of the state exemption laws, so as to estop

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himself from subsequently claiming the exemption. *Moxley* v. *Ragun et al.*, 743.

EXECUTORS AND ADMINISTRATORS.
1. It is no defence to a suit by legatees, that the executor invested the funds in bonds of the Confederate States, though such investment was approved by the Probate Court. *Horn* v. *Lockhart*, 334.
2. The acts of the States in their individual capacities, so far as they did not impair the just rights of citizens under the Constitution, are in general to be treated as valid. *Id.*

FALSE IMPRISONMENT.
1. In an action for false imprisonment evidence of the reputation of the bad character of the plaintiff, in respect to the offence charged, is inadmissible. *Scheer* v. *Keown*, 589.
2. If plaintiff's bad character was one of the grounds of defendant's suspicion, he should have set it up in his answer. *Id.*

FEE. See WILL, 1.

FENCES.
1. Enclosures of railroads, as required by the Act of March 25th 1859 of Ohio, must be separate from that of adjoining proprietors. *Marietta & Cincinnati R.* v. *Stephenson*, 649.
2. The obligation on the part of railroads to maintain fences extends to the public generally. *Id.*
3. The English rule requiring owners of cattle to restrain them from running at large has never been the law of Ohio. *Id.*
4. The owner of cattle running at large is not guilty of a breach of any duty imposed by the Act of April 13th 1865, if they are at large without omission of reasonable care. *Id.*
5. In an action to recover one-half the value of a partition fence under the Act of May 3d 1859 of Ohio, the appraisal of the township trustees is conclusive as respects the value. *Robb* v. *Brachmann*, 650.
6. The fact that the fence is better than required, does not preclude the plaintiff from recovering. *Id.*
7. Nor that it does not strictly conform to the boundary line between the parties. *Id.*

FIXTURES.
1. What are fixtures depends upon the particular circumstances of the case. *Quimby* v. *Manhattan Co.*, 328.
2. As between mortgagor and mortgagee when the fixture appertains to the real estate and is necessary for its enjoyment, it will be treated as realty. *Id.*
3. That the fixtures were called personal property in the deed to the mortgagor cannot affect their character as between him and the mortgagee. *Id.*
4. There are three requisites for determining the character.
   1. Actual annexation to the realty.
   2. Application to the use or purpose for which the realty is appropriated.
   3. The intention of the party making the annexation. *Id.*

FRAUD. See AUCTION. BANKRUPTCY, 35. VENDOR AND PURCHASER, 11, 12, 25, 26.
1. If there has been fraud in the sale of oil stock the purchaser could rescind and recover back price, but the tender must be in a reasonable time after discovery of the fraud. *Leaming et al.* v. *Wise et al.*, 394.
2. If one recklessly makes a false representation to induce another to enter into a contract, he is liable for the fraud and contract may be rescinded. *Beebe* v. *Knapp et al.*, 457.
3. Where an administrator sells his intestate's land to A. without authority of law, so that the title remains in the heir, and B. obtains a conveyance from the heir for a nominal consideration, by fraudulently representing that he was procuring it for A., the legal title passes to B., but A. or his grantee has an equitable interest in the land by reason of such fraud. *Lombard* v. *Cowham*, 710.

FRAUD.

4. Equity has control of a deed obtained by fraud, for the purpose of granting relief. *Lombard* v. *Cowham*, 710.

5. Where fraud in procuring a deed does not make it void, it is no legal defence to an ejectment on the deed. *Id.*

FRAUDS OF STATUTE. See BILLS AND NOTES, 19. VENDOR AND PURCHASER, 16.

1. A parol agreement to pay for services in land is void. *Campbell* v. *Campbell*, 195.

2. Such agreement is void only as to the land, the party may sue for what such services are reasonably worth. *Id.*

3. STUDIES IN THE LAW OF THE STATUTE OF FRAUDS, 593, 602, 721.

4. Contracts within the Statute of Frauds, because not put in writing, are not illegal. *Montgomery* v. *Edwards*, 650.

5. The inability to enforce them is an immunity which the defendant may waive. *Id.*

6. The parol promise of defendant to pay all claims that might thereafter arise against the administrator, in consideration of his putting all the assets of the estate in his hands, is not within the statute. *Randall* v. *Kelsey*, 650.

7. If the name of the agent, with whom a contract for the purchase of real estate is made, appears in the written memorandum, the statute is satisfied although the name of the principal is not disclosed. *Walsh* v. *Burton*, 655.

FREIGHT. See CONTRACT, 6.

GAMBLING.

A speculative option to deliver goods within a certain time at a specified price, where the object of the parties is not a sale and delivery of the goods, but a settlement in money on differences—commonly called a "put,"—is a wagering contract and void, either as within the statutes against gambling or as against public policy. *In re Chandler*, 310.

GATE. See WAY, 1, 2.

GIFT.

1. The endorsement of payment of part of a mortgage, made by the mortgagee under mortgagor's direction, is indicative of a gift or forgiveness of part of the debt. *Green, Administrator*, v. *Langdon et al.*, 458.

2. In the absence of any rule of law to prevent the donor's intention it must be sustained. *Id.*

3. Though delivery and acceptance of a gift are essential to its validity, where tangible property is concerned, yet where it is part of a sum due, it does not admit of technical delivery. *Id.*

GUARANTY. See MORTGAGE, 8, 9.

HAY. See DECEDENTS' ESTATE, 2.

HEIR. See ESTATES.

HIGHWAY. See ESTOPPEL, 7. NUISANCE, 3.

1. Dedication and acceptance by the public create a highway without regard to time of user. *Chapman* v. *Swan*, 257.

2. Neither recognition nor acquiescence can operate by way of estoppel until twenty years have run, after that the right of the public is perfect. *Id.*

3. Though *towns* are not obliged to keep the whole highway fit for use, the principle cannot apply to streets of a *village*. *Wright* v. *Saunders*, 257.

4. No person whether owner or not has a right to obstruct a highway. *Id.*

5. Obstructions in a highway are public nuisances, and may be abated by any person injured. *Id.*

6. Digging post-holes in a street is a nuisance, though in a part not capable of use. *Id.*

7. Where the act done is a nuisance the liability of the party causing it follows of course. *Id.*

8. Township authorities have a special interest in highways beyond that of

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the public at large, and may file a bill in their corporate name to prevent their destruction. *Township of Greenwich* v. *Easton & Amboy R. R.*, 330.

9. A railroad company authorized to change the location of a road if they deem it *necessary*, cannot do so because it is to their *pecuniary advantage*. *Id.*

10. A traveller sustaining an injury by reason of a defect in a highway attributable to the negligence of the corporation bound to maintain it, is not barred of his right to recover by reason of the fact that on his own part an accident has contributed to the injury, if it is in no way attributable to his own negligence. *Baldwin* v. *Turnpike Co.*, 423.

11. And it does not affect the case that the accident occurred upon another road over which the defendants had no control. *Id.*

12. It is not necessary that ordinary care should have been exercised by the plaintiff at the very time and place of the injury, if such accident has rendered the exercise of such care impracticable. *Id.*

13. The plaintiff's horse, driven by his servant in his carriage along a public highway, in the exercise of ordinary care, became frightened by the breaking of the carriage in consequence of a defect for which no negligence was attributable to the plaintiff, and ran furiously, throwing out the driver, soon after which he left the highway and passed over private property to and upon a turnpike road, where, still running furiously, he fell over the side of a bridge by reason of a defect in the railing and was injured, such defect being attributable to the negligence of the turnpike company. *Held*, that the turnpike company was liable for the injury. *Id.*

14. A traveller is not responsible for a secret defect in his carriage or harness, where there has been no want of ordinary care on his part in relation to it. *Id.*

15. It is the duty of a person travelling on a public highway to turn to the right on meeting one coming in the opposite direction. *Daniels* v. *Clegg*, 458.

16. In case of collision the one driving on the left would be liable. *Id.*

17. In using a highway one has a right to expect ordinary prudence from others and to rely on it in determining his course. *Id.*

18. It lies with the party injured by a collision to prove negligence or misconduct on the other's part. *Id.*

19. The "travelled part of the road" is that part which is wrought for travelling, and not simply the wheel track. *Id.*

20. Under the Laws of 1864 of Wisconsin, it is the duty of each overseer of highways, whenever any portion of the highway in his district is rendered impassable by snow drifts, to immediately put it in passable order. *McCabe* v. *The Town of Hammond*, 653.

21. A town will not be chargeable with negligence, and liable in an action for injuries received in consequence of the pavements being obstructed by snow drifts, unless by the exercise of reasonable care, they could have been removed. *Id.*

22. Whether they could have been removed in time, is a question for a jury to determine. *Id.*

23. A town is liable for injuries from the highway being of insufficient width, although the jury find that the injury resulted from an obstruction for which the town was in no way liable. *Fulsome* v. *Town of Concord*, 714.

24. A witness who had examined the place of accident and measured the width, can testify that *in his opinion* the highway was not wide enough for two teams to pass. *Id.*

HOLYDAY. See CRIMINAL LAW, 4.

HOMESTEAD. See BANKRUPTCY, 32. TIME, 5.

1. The orator alleged in his bill that R., his ward, was the owner of a farm in F. and had a homestead therein, and that he was adjudged a bankrupt, and the defendant appointed his assignee, and that said homestead was decreed to R. by the Court of Bankruptcy; that R. absconded, and the orator was appointed his guardian; that the defendant thereafterwards obtained judgment by default against R., before a justice of the peace, without the service

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of process, notice, or recognisance for review, and levied his execution upon, and set off, said homestead; that it was the duty of the orator, as such guardian, to sell said homestead for the support of R.'s family, but that said levy and set-off hindered and impeded his selling the same, and constituted a cloud upon the title thereof; and prayed that said cloud be removed. The answer averred that the Court of Bankruptcy adjudged that R. had a *homestead interest* in said farm; that the defendant's claim upon which said judgment was founded, was anterior to the acquisition of said homestead, and that said homestead was not exempt from said levy and set-off. The case was heard on bill and answer. *Held*, that the case was not one for the interposition of a court of equity. *Rooney* v. *Soule*, 36.

2. Homestead laws should be liberally construed, with the view of promoting the benevolent purpose of securing to a family a home, protected from the creditors of the person who is its head. *Vogler* v. *Montgomery*, 244.

3. The homestead exemption is for the benefit of the family, and a sale thereof under execution is void. The exemption need not be claimed, and the possession and use of property, as a homestead, are notice to the officer making a levy that it is held as such. *Id.*

4. When the homestead exceeds in amount or value the statutory limitation, it is the duty of the officer holding an execution, before making a levy, to proceed under the provisions of the statute to have the homestead appraised and set apart. *Id.*

5. The conveyance and repurchase of a homestead, without a relinquishment of possession, even though made in fraud of creditors, does not constitute an abandonment of the homestead. *Id.*

6. The sale of a homestead under execution will be restrained in equity, on the ground that it will cast a cloud over the title of the owner. *Id.*

7. M. and wife conveyed their farm to their daughter. M. was subsequently adjudged a bankrupt and on a bill by his assignee the deed was declared fraudulent and void as to creditors. M. and wife then claimed a part of the farm as their homestead. The bankruptcy court, without deciding this claim, ordered the land sold, subject to any legal claim of M., and a purchaser having bought accordingly, brought ejectment for the part claimed and occupied by M. as a homestead. *Held*, that the purchaser was not entitled to recover. The deed being set aside the title reverted to M., and then passed to his assignee subject to the exemptions of the Bankrupt Act, as if the deed had never been made. *McFarland* v. *Goodman*, 697.

8. The fact that M.'s deed to his daughter reserved the right to occupy the land as a homestead during his life, *held* to strengthen the foregoing conclusion but not to be necessary to it. *Id.*

9. The voluntary joining of a wife in a deed which is afterwards set aside as fraudulent against creditors, does not prevent her, on such setting aside, from claiming her dower or homestead in the land. *Id.*

HUSBAND AND WIFE. See WILL, 7. WITNESS, 4.

I. *Marriage and Divorce.* See ESTOPPEL, 1.

1. A marriage will not be annulled for impotence. *Anonymous*, 56.

2. The Court of Chancery of New Jersey will annul a contract of marriage outside of its statutory jurisdiction only where the contract is void. *Id.*

3. A widow claiming the right to administer upon the estate of a deceased person is not competent under the Acts of 1864 and 1868 of Maryland to testify as to the *factum* of her marriage. *Redgrave* v. *Redgrave*, 259.

4. Where parties live together ostensibly as man and wife the law will presume that they have been legally married. *Id.*

5. Where proof is offered from which a marriage may be inferred, the presumption is that it was legally contracted according to the law of the country where it occurred. *Id.*

6. The validity of a marriage made in a foreign country is recognised in Maryland, though some of the ceremonies required in the latter state are wanting. *Id.*

7. The consent of the parties is all that is required for a valid marriage *Richard* v. *Brehm*, 393.

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8. If the contract be made *per verba de futuro* and is followed by consummation it is valid. *Richard* v. *Brehm*, 393.

9. Marriage may be proved by reputation, declarations and conduct of the parties. *Id.*

10. Cohabitation *and* reputation are necessary to establish a presumption where there is no proof of actual marriage. *Id.*

11. Where husband covenants in a deed of separation, to pay an annuity to his wife "so long as they shall live separate," a divorce for the subsequent adultery of the wife, will not release him from the payment. *Charlesworth* v. *Holt*, 590.

12. A covenant by husband and wife in a marriage settlement, to settle after-acquired property of the wife, does not extend to property to which wife becomes entitled after husband's death. *Re Edwards*, 590.

II. *Curtesy and Dower.* See CONVERSION, 1, 2. HOMESTEAD, 9. WILL, 4.

13. Prior to Act of 1863 of Maine, a minor *feme covert* could not bar her right to dower, by joining in execution of her husband's deed. *Dela* v. *Stanwood*, 125.

14. That act could not defeat existing right of widow to dower. *Id.*

15. Where wife joins in deed with her husband to bar dower, she will not be barred as against one holding by attachment against husband prior to said deed. *French* v. *Crosby*, 257.

16. Where by an ante-nuptial agreeement, wife accepts a pecuniary compensation in lieu of dower, and on the death of the husband, without electing to waive the provision in the agreement, but induced by the fraud and artifice of the only son and heir, accepts it in full of all claim, and retains it, she will be barred of dower and homestead. *Hathaway* v. *Hathaway's Est.*, 778.

17. Without waiver and notice in writing, the Probate Court has no power to decree wife homestead and dower. *Id.*

III. *Powers of Married Women.*

18. A contract by a married woman for sale of her real estate and a deed executed by her alone is void. *Phelps* v. *Morrison*, 56.

19. A judgment against the husband is no notice to wife's grantee if the title is in her. *Id.*

20. Such judgment is no encumbrance on the property. *Id.*

21. A married woman has not capacity to enter into a general mercantile partnership not connected with or relating to her separate property, and where she assumes to do so with the consent of her husband, and is by him assisted in managing and carrying on the business, the husband, and not the wife, is to be regarded in law as the partner. *Swasey* v. *Antram*, 577.

22. A *feme covert* having obtained a "permit" to trade within the lines of the army, with the knowledge and consent of her husband entered into a partnership with other persons, for the purpose of buying and selling goods and merchandise under said "permit," and herself, with the assistance of her husband, managed and conducted the business. The firm was subsequently dissolved, and its property transferred by the other partners to her, she agreeing to pay all the partnership debts. She then sold the property to S., who had notice of all the facts, and who in like manner agreed to pay the partnership debts. This was all done with the knowledge and concurrence of the husband, who joined her in executing the bill of sale to S. In an action by a creditor of the firm against the *husband* and the other members of the firm, not including the wife: *Held*, that the goods in the hands of S., or the price agreed by him to be paid therefor, and not yet paid, are liable to attachment in the action. *Id.*

IV. *Separate Estate.*

23. A married woman to whom possession of land is delivered under a parol gift, and who occupies the land uninterruptedly, adversely and exclusively as her own for fifteen years, thereby acquires a complete title in herself, subject to an estate by curtesy in her husband, where the husband, although living with her, claims no independent, exclusive occupation in himself. *Clarke et ux.* v. *Gilbert*, 19.

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24. Where a debt is contracted partly for necessaries and partly by wife for goods for resale, the separate estate of the wife is not discharged from liability. *Parker* v. *Dillard*, 58.

25. Husband may permit wife to have the savings of her industry as her separate property. *Rivers* v. *Charlton*, 58.

26. Bill in equity by wife, against her husband's mortgagee for her property acquired by her savings, should allege that they were with her husband's consent. *Id.*

27. A married woman may charge her separate real estate with the payment of a debt contracted by herself and husband, by means of a joint promissory note. *Hall & Hume* v. *Eccleston*, 195.

28. Equity will enforce such a contract against the separate estate of the wife. *Id.*

29. A deed from a married woman of her separate estate directly to her husband, is a nullity. *Preston, Trustee*, v. *Freyer*, 258.

30. Where property which is sold under a decree in equity is represented as of indisputable title, and it turns out to be defective, the court will require the trustee to refund the purchase-money even after ratification. *Id.*

31. Husband may convey a reasonable amount of property to his wife, and it will be valid against future creditors. *Brookbank* v. *Kennard*, 258.

32. Such conveyance may be without intervention of trustees. *Id.*

33. That the conveyance was not recorded for a year will not render it void. *Id.*

34. Land conveyed to a husband by his wife's guardian in satisfaction of a decree in her favor on settlement of guardianship account, will be decreed to be her separate property. *Fry et al.* v. *Hammer*, 459.

35. A note and mortgage of the land to secure its payment, executed by the wife and husband for money to pay off an outstanding mortgage, imposed no liability on her or the land. *Id.*

36. By an ante-nuptial contract between B. and L. in 1857, B. agreed that certain bank and other stocks, then conveyed by him to a trustee, should be held by the trustee for the sole use of L. during her life, and be subject to any disposition she might make of them by will or written appointment; the same to be in lieu of dower and of all distributory share of his personal property if she should survive him. *Held*, that the right to the income from the stocks did not, under the statute (General Statutes, tit. 13, sec. 20), vest in the husband on the marriage, but that it belonged to the wife as her sole and separate estate. *Boardman's Appeal*, 477.

37. After the marriage in 1857 until his death in 1871, B. received the dividends upon the stocks, upon a power of attorney from the trustee, without objection from his wife, rendering no account to her and keeping none, she not notifying him in any way that she should claim them as her own. It was found however that she had never in fact intended to relinquish her right to them, and did not suppose she had done so; that she supposed he was investing them for her benefit, a belief which was strengthened by occasional expressions of his; and that from motives of delicacy she did not inquire of him, he being uncommunicative on all business matters. It also appeared that the dividends were not needed or used for family support, B.'s income from other property being far in excess of the family expenditures. *Held*, that she was entitled to recover their whole amount from his estate, with interest. *Id.*

38. A large amount of the dividends so received by B. had been from time to time invested by him in the name of the trustee in additional stocks of the same description. In 1870 B. procured a power of attorney from the trustee and transferred to himself all the stocks so acquired, intending to convert them to his own use. His wife had no knowledge of the transaction, and did not in fact know until after B.'s death that the dividends from the original trust stocks had been invested in such additional trust stocks. *Held*, that her rights were not affected by the transaction. *Id.*

39. B., soon after this transaction and in pursuance of a general purpose, made a new will, in which he referred to the ante-nuptial contract and con-

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firmed it, and gave to his widow his mansion-house and $200,000 for her life; stating his object to be to make abundant provision for her support and comfort, in lieu of dower and of all share in his real and personal estate. It appeared from evidence outside of the will that B. did not expect his widow to make a claim upon his estate for the dividends he had received, and that he made the foregoing provision for her in his will in that belief; also that the provisions of the will in her favor had been made known to her and that she had expressed herself fully satisfied with them. *Held*, that it was of questionable propriety to go outside of the will for evidence of the purpose and understanding of the testator; but that the will, taken by itself, or in connection with the facts stated, did not make the acceptance of its provisions by the widow a bar of her right to present a claim against the estate for an indebtedness. *Boardman's Appeal*, 477.

40. And *held*, that her right to any portion of the sums received by B. as dividends was not barred by the Statute of Limitations. *Id.*

V. *Actions by and against.*

41. A married woman is not liable upon a special promise to pay her husband's debt, unless made in a form to bind her separate estate. *Lennox* v. *Eldred*, 125.

42. Nor on a verbal promise made after his death. *Id.*

43. A wife whose goods have been levied upon by a creditor of her husband, is entitled in an action of trespass *de bonis asportatis*, to damages, punitive if the defendant acted after notice. *Strasburger* v. *Barber*, 258.

44. Under the Code of Maryland, a married woman may sue in trespass *de bonis asportatis*, by her next friend, without joining her husband. *Id.*

45. A note and mortgage given by a married woman for a loan to purchase land, imposes no personal liability on her, nor on the land. *Riley et al.* v. *Pierce*, 392.

46. The statutes of Illinois having given a married woman the sole control of her property and earnings, free from any control or interference of the husband, the necessary operation of such statutes is to discharge the latter from any liability for the wife's torts committed during coverture out of his presence and without his participation. *Martin* v. *Robson*, 547.

ICE. See CONSTITUTIONAL LAW, 48.

ILLEGITIMATES. See PARTITION, 1.

INFANT. See PRACTICE, 6.

1. The contract of an infant can be rescinded by its parent and a suit maintained for recovery of money paid under it. *Sequin* v. *Peterson*, 58.

2. Need not himself be free from fault to entitle him to recover damages for fault of another. *Railroad* v. *Stout*, 330.

3. Infant of tender years is not within the ordinary rule, that an employee cannot recover against his employer for the carelessness of a co-employee which results in injury. *Railroad* v. *Fort*, 331.

4. The privilege of infancy cannot be used as a weapon of attack or fraud, and an infant cannot repudiate his deed and regain the property without restoring the consideration paid for it. *Prout* v. *Wiley*, 460.

5. Delay alone will not operate as an affirmance of a deed executed during minority, nor prevent a minor from reclaiming the land, at any period within the Statute of Limitations. *Id.*

6. A parent in sending his child to school surrenders to the teacher such control over the child as is necessary for the proper government and discipline of the school. But where the parent desires that the child shall omit a part of the regular course of study and so directs him, the teacher has no paramount authority to enforce the study of the omitted part, and corporal punishment of the child for disobedience under such circumstances is an unlawful assault. *Morrow* v. *Wood*, 692.

7. The fact that the school was a public one, in which the studies were prescribed by statute, *held* not to vary the general rule as to the right of a parent to direct the omission of part of the prescribed studies. *Id.*

INJUNCTION. See HOMESTEAD, 6; MORTGAGE, 2; MUNICIPAL CORPORATION, 1, 2, 10; NUISANCE, 3, 4; TRESPASS, 3.

1. Will be granted to prevent persons from keeping forcible possession of a church edifice, and preventing its regularly elected and qualified trustees from entering. *Lutheran Ev. Church* v. *Gristgau et al.*, 589.

2. By such injunction the plaintiff by its trustees may be restored to possession without any further order. *Id.*

INSOLVENT. See DEBTOR AND CREDITOR, 1, 2, 4; INSURANCE, 2.

1. A state cannot by legislative act appropriate the assets of an insolvent bank to the injury of other creditors. *Barings* v. *Dabney*, 590.

2. Such an act would be repugnant to that clause of the constitution, prohibiting a law impairing the obligation of contracts. *Id.*

INSURANCE. See COMMON CARRIER, 1. WAR.

1. Whether an over-valuation and proof of loss be fraudulent or not is a question of fact for the jury. *Williams* v. *Phoenix Co.*, 125.

2. One who dies insolvent can make no disposition of the fund accruing from a life insurance policy, if he leaves neither widow nor child. Such money becomes assets for payment of debts. *Hathaway* v. *Sherman*, 260.

3. An intention on the part of a testator to change the direction given by law to this species of property is not to be inferred from general provisions in his will. *Id.*

4. When a policy containing the words "such other risks as may be agreed upon, as per endorsement, accepted by the company," has the risk agreed on, the premium paid and the endorsement made by an agent, the insurance is effected. *Wass* v. *Maine Marine Insurance Co.*, 260.

5. A contract of insurance is executory until the expiration of the term of insurance. *U. S. Insurance Co. of Baltimore* v. *Tardy*, 393.

6. If the company becomes insolvent the insured may put an end to the contract. *Id.*

7. The amount of unearned premiums to be returned in case of insolvency is the portion applicable to the time not covered by the risk with interest from the termination of contract. *Id.*

8. The demand for unearned premiums is a *chose in action* which may be sold without writing. *Id.*

9. An inaccurate representation (not a warranty) believed to be true, would not defeat an action on a policy. *Imperial Fire Ins. Co.* v. *Murray*, 393.

10. The insurable interest of a lessee is the value of the property he is bound to replace. *Id.*

11. Where a policy expressly makes the application a part of itself, and a warranty of all the statements in it, it will be so considered and must be strictly true to authorize a recovery on the policy. *American Ins. Co.* v. *Gilbert*, 460.

12. Parties may contract on such conditions as they see fit. *Id.*

13. When it is expressly provided that over-valuation shall make the policy void, it is error to submit to the jury, whether it was done in good faith. *Id.*

14. Whether an insurance company can be held upon the process of garnishment depends upon the state of the claim at the time of service of process. *Martz* v. *Detroit F. & M. Ins. Co. Garnishee of Hebel*, 461.

15. Where the claim is contingent it cannot be held. *Id.*

16. An insurance company having issued certain policies reinsured them in another company. A loss occurred and subsequently the first company became insolvent. The second company then bought up some of the policies at a discount. *Held:*

(1.) That it was an investment within the corporate powers of the second company and not against public policy.

(2.) That in an action by the assignees in bankruptcy of the first company to recover the amount of the reinsurance, the second company could set off the purchased policies at their face-value. *Hovey* v. *Home Ins. Co.*, 511.

17. A life-policy issued by a foreign company, is not rendered void by the neglect of the company to comply with the provisions of the Act of April 16th 1867, providing for the incorporation and regulation of insurance companies;

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nor will such neglect, in an action brought against the company on the policy, excuse the policy-holder from paying premiums according to the terms of the policy. *Union Mutual Life Ins. Co.* v. *McMullen*, 610.

18. Where a life policy is made and accepted, upon the expressed condition that if the annual premium is not fully paid within the time specified, the policy "shall be null and void, and wholly forfeited," the failure to pay the premium avoids the policy. *Id.*

19. Where the policy also provides that no agent of the company, except the president and secretary, can waive such forfeiture, authority conferred upon an agent before the premiums became due to collect them, does not impliedly invest him with authority to waive the forfeiture. *Id.*

20. Notwithstanding the limitation upon the power of agents, declared in the policy in respect to waiving the forfeiture, the company is competent to invest such authority in any of its agents. The authority may be express, or it may be implied from circumstances, but the burden of showing it in either case, is on the party claiming the benefit of its exercise. *Id.*

21. An agent, having no authority to waive the forfeiture, acting in the interest of the assured, received the unpaid part of a premium on a forfeited policy, after the life insured had ended, for which he gave a receipt antedated, and forwarded the money to the company, concealing the facts as to such payment. *Held*, that the receiving of the money by the company, in ignorance of such facts, was no ratification of the act of the agent in receiving the money. *Id.*

22. The fact that the company, on tendering back the money so received, omitted to return certain notes given in part payment of premiums, but which the forfeiture of the policy rendered uncollectable, will not affect the rights of the parties in a suit on the policy; nor is the fact that the notes are payable to order material, where they show on their face the consideration for which they were given. *Id.*

23. When before the expiration of time of proving loss, the insurer denies all liability entirely *upon other grounds*, it is a waiver of the condition requiring proofs of loss. *Smith* v. *Amazon Ins. Co.*, 651.

24. Where the question in the application relating to the ownership of the property, was filled in by the agent of the insurer without asking the insured, a mistake will be held the mistake of the insurer and cannot defeat the policy. *Id.*

25. An *unintentional mistake* in the proofs of loss will not prevent a recovery on the policy. *Id.*

26. A contract of insurance made in another state on property situated in New Jersey is valid and will be enforced here. *Columbia Fire Ins. Co.* v. *Kinyon*, 674.

27. Although it would be competent by legislation to invalidate in our courts an insurance contract made in good faith in another state on property located here, it would be so contrary to the comity which has been observed between the states, that such an intention will not be imputed to the law-makers, unless the language used so clearly expresses that purpose as to bear no other reasonable interpretation. *Id.*

28. The regulations of our insurance laws are not merely for the purpose of revenue, they impair the contract made in violation of them, so far at least as concerns the right of the foreign corporation to sue upon it. Whether public policy requires that the party insured shall be permitted to enforce the agreement is not decided. *Id.*

29. The declaration is defective in that it does not show that when the assessment was made upon the deposit note the defendant was a member of the company and as such liable to assessment, nor does it show that the losses assessed accrued while the defendant's policy was alive, or that the assessment was made on the basis authorized by the corporation act. *Id.*

30. If the policy had expired, the defendant could not be held without alleging that the loss accrued before its expiration. If the policy was alive the losses must have occurred while it was in force. *Id.*

31. A sale of decedent's property by the Orphans' Court is not such an alienation as will avoid a policy. *Farmers' Mut. Ins. Co.* v. *Graybill*, 710.

INSURANCE.

32. Suit on the policy should be in name of administrator to use of vendee, where the sale was not confirmed before the loss. *Farmers' Mut. Ins. Co.* v. *Graybill*, 710.

33. In an action on a life policy where assured committed suicide, it is not error for the court to charge, "If the assured was not conscious of the act he was committing, but acted under an insane impulse, or if he was incapable of exercising his judgment in consequence of his reasoning powers being overthrown," the defendants are liable. *Am. Life Ins. Co.* v. *Isett's Adm.*, 711.

34. It is not error to refuse to charge, That if the assured was conscious that his death would follow the discharge of the pistol, there can be no recovery, although he was laboring under mental depression or disturbance of mind. *Id.*

35. An assignee of a policy takes it subject to all the equities which attach to it in the hands of the assured. *Johnson* v. *Phœnix Ins. Co.*, 779.

36. If insurer assents to assignment, he cannot claim any set-off, in a suit by the assignee, which he might have had against insured. *Id.*

INTEREST. See CONFEDERATE NOTES, 4; ESTOPPEL, 9; VENDOR AND PURCHASER, 1.

1. A vendee taking possession without paying purchase-money is bound to pay interest. *Parker* v. *Parker*, 260.

2. Where allowed by way of damages must be according to the rate of the *lex fori*. *Goddard* v. *Foster*, 330

INTERNAL POLICE. See ALIEN, 1. CONSTITUTIONAL LAW, 52.

INTOXICATING LIQUORS. See CONSTITUTIONAL LAW, 20, 21.

1. The Act of 1872 imposes a penalty on every person who shall keep a place where it is reputed that intoxicating liquors are kept for sale, without having a license therefor. Held to be sufficient that the place was reputed to be one where intoxicating liquors were kept for sale, and not necessary that it be reputed that they were kept for sale without a license. *State* v. *Buckley*, 355.

2. In a prosecution under this act the accused claimed that the act was unconstitutional, and asked the court to charge the jury that they were judges of the law as well as of the facts. The judge instructed the jury that in a criminal case they were judges of the law as well as of the facts, but that they were under the same obligation in the matter with the judge on the bench, and were not authorized to say that that is not law which is so; that the Supreme Court had decided the act to be constitutional, and that in his opinion it was constitutional; that if they decided that to be unconstitutional which the Supreme Court had decided to be constitutional, they would disturb the foundations of law; but that, after all, they were judges of the law, and if on their consciences they could say that the act was unconstitutional they ought to acquit the accused. Held, on motion of the accused for a new trial, that the charge was correct. *Id.*

3. By statute the jury are made the judges of the law in criminal cases, but not in any such sense that they are at liberty to disregard the law. They are to inquire what the law is, and where their judgment is satisfied, the law as thus ascertained is binding upon them, and should be their guide, whether it is or is not as they may think it ought to be. *Id.*

JOINT LIABILITY.

1. In an action of tort against two or more, separate acts not committed with common purpose or in concert, will not authorize a joint recovery. *Leidig* v. *Bucher et al.*, 718.

2. Plaintiff may recover against the one concerned as if he alone had been sued. *Id.*

3. Defendants who have not conspired or joined in committing the wrong, should not be joined in same action. *Id.*

JUDGMENT. See CONFEDERATE STATES, 1. PROCESS, 2. WAY, 4.

1. May be assailed collaterally for fraud, by persons not parties or privies to it. *Spicer et al.* v. *Waters*, 260.

2. A judgment is not a written instrument within the statutes requiring copies in pleading. *Brooks* v. *Harris*, 262.

JUDGMENT.

3. A judgment without personal service on the defendant is not evidence of his liability outside of the state authorizing it. *Board of Public Works* v. *Columbia College*, 329.

4. Judgment on a note or contract operates as a merger of it, and is a bar to a second suit on the note. *Eldred* v. *Bank*, 330.

5. Where one of the defendants, in an action on a joint contract, dies before judgment, and the judgment is taken against all the defendants, without any suggestion of his death, or making his representatives parties, such judgment is not void, but merely voidable, and is a determination of the action, within the meaning of sections 218 and 219 of the code, authorizing an action by the plaintiff in attachment against the garnishee. *Swasey* v. *Antrim*, 577.

6. A court has power to correct a clerical error in entering its judgment. *Durning* v. *Burkhardt*, 651.

7. A judgment must be considered as entered during the term at which the cause was tried. *Id.*

8. At a subsequent term though the court cannot review the judgment on the merits, it may correct a mistake in entering it, so as to make it conform to its decision. *Id.*

9. The court cannot *vacate a judgment after the term* at which it was entered. *Scheer* v. *Keown*, 711.

10. It may set aside a judgment at the same term. *Id.*

11. It may amend a judgment so as to correct clerical errors or mistakes of the clerk. *Id.*

12. It may vacate at a subsequent term a void judgment. *Id.*

JURY. See CRIMINAL LAW, 6, 7. INSURANCE, 1. INTOXICATING LIQUORS, 2, 3.

LACHES. See LEGAL TENDER NOTES, 2. TRUST AND TRUSTEE, 5, 11.

1. If ignorance of the fraud is relied on to excuse the delay of five years in filing a bill to set aside judicial proceedings for fraud, it must be shown specifically when the knowledge was first obtained. *Harwood* v. *Railroad*, 329.

2. A court will not set aside the proceedings under which an improvement has been made by a city where there has been laches in applying for relief. *Bald et al.* v. *City of Elizabeth*, 391.

3. Undue delay in the tender of price, and rescission of a contract of sale, would affirm it. *Leaming et al.* v. *Wise et al.*, 394.

4. When the facts are undisputed what is reasonable time or undue delay is for the court. *Id.*

LANDLORD AND TENANT.

1. A landlord who removes his tenant during the term cannot plead in justification of the trespass, that the house was used for a place of prostitution. *Miller* v. *Forman*, 394.

2. A tenant who goes into possession by parol permission of the landlord without any agreement as to time or rent, cannot by the erection of buildings and making repairs claim that his tenancy has become enlarged, by an implied liability to pay reasonable annual rent. *Rich* v. *Bolton*, 718.

3. Such tenancy lacked the essential element of *annual rent* to make it a tenancy from year to year. *Id.*

4. Such tenant is not entitled to six months' notice to quit. *Id.*

LEGAL TENDER NOTES. See COVENANT, 5.

1. The taker of counterfeit coin, or paper-money which has been made legal-tender by law, must use due diligence to ascertain its character and to notify the giver, to entitle him to recover its value. *Atwood* v. *Cornwall*, 230.

2. Any unnecessary delay beyond such reasonable time as would enable the taker to inform himself as to its genuineness acts as a fraud on the giver and prevents a recovery. *Id.*

3. Whether the rule, "that a party passing negotiable paper warrants its genuineness," is applicable to payments made in coin or legal-tender notes. *Quere?* *Id.*

LICENSE.

1. A broker cannot recover commissions unless he has taken out a license under the Act of Congress of June 30th 1864. *Holt* v. *Green*, 453.

2. An action cannot be maintained in Pennsylvania founded on a violation of a United States law. *Id.*

3. There is no difference whether the contract is *malum prohibitum* or *malum in se*, the test is whether plaintiff requires the illegal transaction to establish his case. *Id.*

LIEN. See BANK AND BANKER, 5, 7. HUSBAND AND WIFE, 20. SHIPPING, 11, 13. STOCKHOLDER, 2. VENDOR AND PURCHASER, 6, 7, 8, 9.

LIMITATIONS. See CONSTITUTIONAL LAW, 6. HUSBAND AND WIFE, 40. PARTNERSHIP, 1. TIME, 1.

1. Possession taken under a parol gift is adverse in the donee against the donor, and if continued for fifteen years perfects the title of the donee as against the donor. The donor in such case not only knows that the possession is adverse, but intends it to be so, and there is no occasion for any notoriety. Notoriety is only important where the adverse character of the possession is to be brought home to the owner by presumption. *Clark et ux.* v. *Gilbert*, 19.

2. The statute may be pleaded to an action for relief against fraud in the conveyance of land, as well as to an action to recover money. *Wallace* v. *Metzker*, 195.

3. NULLUM TEMPUS OCCURRIT REGI, 465.

4. Where the occupant of land claiming title under a sheriff's deed upon a sale on execution, has been in possession for ten years, the original owner is barred by the statute. *North* v. *Hammer*, 591.

5. The fact that the title was not divested by the sale, in consequence of some defect in the proceedings, does not prevent the application of the statute. *Id.*

LIS PENDENS.

Is a good plea in abatement without showing actual vexatiousness. *Gamsby* v. *Ray*, 58.

LIVE-STOCK. See COMMON CARRIER, 1, 3.

MALICIOUS PROSECUTION.

The advice of counsel who have been fully informed of the facts is a complete justification. *Stanton* v. *Hart*, 394.

MANDAMUS. See ATTORNEY, 7.

Against an officer of the government abates on his death or retirement from office, his successor cannot be made a party. *United States* v. *Boutwell*, 330.

MARRIAGE. See HUSBAND AND WIFE, I.

MASTER AND SERVANT. See INFANT, 3.

1. B., who was a carpenter, was employed by R. to go in a boat, upon a submerged lot owned by him; and do certain work of his trade. While there at work, a shot was fired from a house on an adjacent lot, which wounded B., hence his action for damages. It appeared that R. knew his possession of the lot was resisted and a resort to arms was imminent at any moment. He did not inform B. of this fact, and the latter had no reason to believe he was going into danger when employed to do the work. *Held:* R. was liable. The risk B. legally agreed to take was such as was necessarily incident to his employment. R. could have relieved himself of responsibility by informing B. of the facts of the danger. The concealment of facts, or the failure to state them by employer to employee, which would tend to expose any hidden and unusual danger to be encountered in the course of the employment, to a degree beyond that which the employment fairly imports, renders the employer liable for injuries resulting therefrom to the employee. *Baxter* v. *Roberts*, 41.

2. A servant who wilfully neglects the orders of his master cannot claim

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exemption against a party injured in consequence thereof. *Horner* v. *Lawrence*, 396.

MAXIMS. See LIMITATION, 3.
IN JURE NON REMOTA CAUSA SED PROXIMA SPECTATUR, 14.

MERGER. See CRIMINAL LAW, 17. CORPORATION, 10. JUDGMENT, 4.

MINES. See WATER AND WATERCOURSES.

MORTGAGE. See ESTOPPEL, 6. GIFT, 1. RAILROAD, 13. SHIPPING, 2. TRUST AND TRUSTEE, 22, 23. USURY, 2.
1. Accretions, by growth of cuttings from plants mortgaged, pass to the mortgagee. *Bryant* v. *Pennell*, 125.
2. Equity will not enjoin a mortgagee of chattels, the mortgage being given by a corporation to secure the debt incurred on a sale of the chattels, from selling them at the instance of a stockholder. *Amerman* v. *Wiles et al.*, 194.
3. The mortgage being executed by the president and secretary, who were the owners of two-thirds of the stock, complies with a statute requiring the written assent of two-thirds of the stockholders. *Id.*
4. A sale of mortgaged premises in all other respects unobjectionable will not be set aside for inadequacy of price. *Horsey* v. *Hough*, 261.
5. The duties of a mortgagee making a sale, are analogous to those of a trustee, and the court will determine upon the propriety of the sale. *Id.*
6. The right of a mortgagee under a power in the mortgage to sell the mortgaged premises in case of default, is not impaired or suspended by the war, on account of the voluntary residence of the mortgagor in the hostile section. *Degiverville* v. *Dejarnette*, 318.
7. Notice required under a power of sale in a mortgage is not for the benefit of the mortgagor in the sense of notice to him. It is only to secure his right to a fair sale of the property. *Id.*
8. A mortgagee who assigns the mortgage and guarantees the debt is a proper party to a suit to foreclose. *Jarman* v. *Wisevall*, 331.
9. That the liability of the guarantor does not take effect until the remedy against the mortgagor is exhausted is no objection to the jurisdiction of a court of equity. *Id.*
10. Nor the fact that the guarantor is liable at law. *Id.*
11. Motion to amend final decree, to make it personal against guarantor, refused where remedy at law complete. *Id.*
12. Where a conveyance is made as a security for a loan it is immaterial what are the terms of the agreement, it will be considered in equity a mortgage. *Danzeisen's Appeal*, 394.
13. Where a bill charges that the defendant holds in trust for the plaintiff, and the facts show that there was a mortgage, the Supreme Court will sustain the bill to reach the justice of the case, and disregard the use of inappropriate terms. *Id.*
14. The assignee of a mortgage, holds it subject to all the equities to which it was liable in the hands of the assignor, unless the mortgagor has estopped himself. *Ashton's Appeal*, 395.
15. The mortgagor having given a certificate of "no defence" cannot set up one against an assignee. *Id.*
16. A subsequent assignee may avail himself of a certificate given to a former, if he shows that he is an assignee for value without notice. *Id.*
17. A purchaser with notice of fraud or trust may protect himself under a prior purchaser without notice. *Id.*
18. In a foreclosure suit the rights of an adverse title cannot be adjudicated. *Simmons* v. *Emerson et al.*, 523.
19. Sec. 5154 of Michigan laws, does not mean to give purchaser at foreclosure sale the title, by barring the true owner. *Id.*
20. The purchaser must be left to try the hostile title in ejectment. *Id.*
21. The holder of a mortgage, given on representations that turned out to

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be false, will notwithstanding be entitled to recover on it, on the ground that there is a distinction recognised by the law between representations of *existing* facts, and a representation of facts *yet to come* into existence. *Sawyer* v. *Prickett and Wife*, 711.

22. A stipulation in a mortgage given to secure a note, not to foreclose, "until the maker's property is exhausted," is complied with, when after judgment on the note, it appears the maker has no property subject to execution. *Riblet* v. *Davis*, 779.

23. In the absence of fraud a judgment-creditor whose execution has been set aside, whereby the goods were lost to him, may recover the whole amount of his debt from a co-surety of the debtor. *Id.*

MUNICIPAL CORPORATION. See NEGLIGENCE, 20. SIDEWALK, 2, 3. STREETS, 5, 6.

1. Equity will not restrain a city from assessing the property-owners for the cost of paving a street on the ground that it was not done in accordance with the contract. *Leibenstein* v. *City of Newark*, 59.

2. Equity will not restrain erroneous assessment unless it will cause irreparable injury or lead to multiplicity of suits. *Id.*

3. That it would deprive complainant of his property is not an irreparable injury. *Id.*

4. If the corporation in making streets is to be regarded as the agent of the landowners, they must bear the consequence of its negligence. *Id.*

5. If landowners permit the city to pay the contractors they can have no relief against the assessment. *Id.*

6. Courts will not disturb municipal bodies in the exercise of their police powers, when they are exercised for the general welfare. *Weil* v. *Ricord et al.*, 60.

7. The Board of Health cannot absolutely prohibit the carrying on of a lawful business not necessarily a nuisance. *Id.*

8. A grant of special powers to a corporation will not be enlarged by intendment. *Id.*

9. Municipal authorities have power to bind property-owners for street improvements, but the owners are entitled to have the contracts performed substantially according to their terms. *Schumm* v. *Seymour*, 331.

10. Equity will restrain the authorities if they are about to pay for what is not done according to the contract. *Id.*

11. If the property-owners stand by and see the contractor paid, they can have no relief against the assessment made upon them. *Id.*

12. In the exercise of legislative or discretionary powers municipal corporations are beyond the control of the courts. *Id.*

13. In the payments of contracts with the property-owners' money they act as agents and are amenable. *Id.*

14. The affairs of a corporate body can be transacted only at a corporate meeting. Their only existence is as a board and they can do no act except as a board. *Id.*

15. Public policy requires restrictive enactments to be rigidly enforced. *Id.*

16. It is a fundamental principle of law that all persons contracting with a municipal corporation must at their peril see that the officers have power to make the contract. *Id.*

17. The Legislature has full power to authorize the laying of railways in the streets of a city. *Paterson & Passaic Railroad* v. *Mayor of Paterson et al.*, 333.

18. The grant of such authority, even without the consent of the property owners along the route, is lawful. *Id.*

19. Where such consent is required, the knowledge of the property-owners that the road is being constructed, and their failure to object while the work is being done, will be deemed evidence of consent. *Id.*

20. The city is to be deemed the owner of an open square for the purpose of giving consent. *Id.*

21. A contractor under proposals for street improvements must be held to his

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bid, if he receives more it is an illegal charge against the landowners. *J. M. Board et al.* v. *City of Hoboken*, 395.

22. It must be clearly shown that injustice has been done before an assessment made by commissioners for street improvements will be set aside upon the facts. *Pudney et al.* v. *Village of Passaic*, 395.

23. There is no rule condemning assessments by the lineal feet of frontage. *Id.*

24. In all matters of general concern, such as taxation, or the suppressing of insurrections, municipal corporations have no local right to act, independent of the state. *Park Commissioners* v. *Common Council*, 524.

25. In objects and purposes peculiarly local, the state is no more concerned than in the private concerns of its citizens. *Id.*

26. It is a fundamental principle in Michigan, that the people of every town and city are entitled to the benefits of local self-government. *Id.*

27. As to property held for its own private purposes a city is to be regarded as a natural person and entitled to the like protection. *Id.*

28. The constitutional principle that no person shall be deprived of property without due process of law, applies to artificial as well as natural persons and to municipal corporations. *Id.*

29. The state cannot take, by any process of taxation, the money of an individual citizen, for purposes of local conveniences. *Id.*

30. Where a town issues bonds to which coupons are attached and acknowledges in the bond that the town is indebted to bearer it may be sued on the coupons alone. *Town of Queensbury* v. *Culver*, 652.

31. The liability of the town is not taken away by the fact that the legislature has directed a special mode of raising the money to pay the bonds and interest *Id.*

32. Where the charter of a city declares that when the grade of a street is *changed*, all damage shall be paid by the city, the right to such damage is *purely statutory*. *Stadler* v. *Milwaukee*, 652.

33. Damages can only be recovered for injuries to the land or building itself, and not for injury to the trade carried on upon the premises. *Id.*

34. Where the charter of a city authorizes councils to improve a street at expense of lot-owners, only upon presentation of a petition signed by a certain proportion of such owners, the presentation of such petition is essential to give councils jurisdiction. *Canfield* v. *Smith*, 780.

35 Where the improvement was made without such petition, a lot-owner whose property was sold for non-payment of the assessment, may set aside the sale. *Id.*

36. A lot owner will not be estopped from alleging want of power in the councils, because having notice that the work was ordered, he did not interpose until it was done. *Id.*

NAME. See COVENANT, 9. EVIDENCE, 10, 12.

NATURALIZATION.

Certificates of naturalization are records and cannot be impeached collaterally. *Scott* v. *Strobach*, 461.

NAVIGATION. See NUISANCE, 6. RIPARIAN OWNER, 7, 8.

1. The right of navigation is not so far paramount as to make booming facilities a nuisance whenever they encroach on navigable waters. *Brig City of Erie* v. *Canfields*, 395.

2. An injury to a boom is not a maritime tort and cannot be redressed in admiralty. *Id.*

NEGLIGENCE. See RAILROAD, 9.

1. Where a party charters a tow-boat for the season, the owners to furnish the hands and pay expenses, for a round sum; he will not be responsible for damage to a tow, caused by negligence of the hands. *Bissel* v *Torrey*, 60.

2. A party erecting a brewery in the populous part of a city, will be held to a higher degree of care and diligence, to prevent injury to surrounding

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property, by the construction and management of the chimneys and flues, than if it was located in the country. *Gagg* v. *Vetter*, 196.

3. The want of care or skill in the selection of the best plans for the construction of the chimneys, will be deemed negligence and render him liable for injuries resulting therefrom. *Id.*

4. The question of negligence is one of mingled law and fact, and when the facts are undisputed to be decided by the court. *Id.*

5. A complaint against a railroad to recover for negligence must distinctly allege that the injury occurred without the fault or negligence of the plaintiff. *Maxfield* v. *C. J. & L. Railroad Co.*, 261.

6. Where the plaintiff has been guilty of a plain act of carelessness which has contributed to an accident, it is the duty of a court as matter of law, to say that he cannot recover. *Lewis* v. *Baltimore & Ohio R. R.*, 284.

7. Plaintiff desiring to cross a street in Baltimore, after dark, the street lamps being lighted, found a train of railroad cars blocking the crossing. A crowd had collected waiting for an opportunity to cross, and while plaintiff was waiting two women had been prevented by the police from creeping under the couplings, but several persons had climbed up the platforms and thus crossed. After waiting about five minutes plaintiff started to get on the platform with the intention of crossing in the same manner, when the train started and his leg was crushed between two cars. *Held*, that such an act was contributory negligence and he could not recover. *Id.*

8. The fact that the railroad company was negligent in thus blocking a street crossing contrary to the city ordinances, did not relieve plaintiff from the duty to use ordinary care to avoid danger. *Id.*

9. A party is not answerable in damages for the reasonable exercise of a right unless upon proof of negligence, unskilfulness or malice. *Phila. & Reading R. R.* v. *Yerger*, 396.

10. Railroad not liable for buildings burned by sparks from an engine used in the ordinary way. *Id.*

11. Actionable negligence exists only when a party whose negligence occasions the loss owes a duty from contract or otherwise to the party who suffers. *Kohl* v. *Love*, 396.

12. A purchaser who relies on a tax receipt given by a collector of taxes for the amount due in buying land, cannot maintain an action against the collector if he suffers a loss. *Id.*

13. A tax collector is not required to give certificates that property is discharged from taxes, and any one relying on his receipts does so at his peril. *Id.*

14. If defendant's negligence is such that injury could not have been avoided, plaintiff's negligence is immaterial, and is not properly speaking contributive. *Daniels* v. *Clegg*, 459.

15. Age and sex should be considered in deciding the question of negligence. *Id.*

16. It is such negligence for a passenger in a railroad car to allow his arm to project out of the window, that if it is injured by coming in contact with any external object he cannot recover, notwithstanding the injury may have been partly caused by the negligence of the company in permitting an obstacle to be too near the track. *P. & C. Railroad* v. *Andrews*, 566.

17. Where there is contributory negligence on the part of the plaintiff he cannot recover for injury. *Pittsburg, F. W. & C. Railway* v. *Krichbaum's Ad.*, 780.

18. A refusal so to charge is error for which judgment will be reversed. *Id.*

19. Negligence is the want of such care as men of ordinary prudence would use in similar circumstances. *Mayor, &c.* v. *Holmes*, 780.

20. In the absence of contributory negligence on the part of the plaintiff, a municipal corporation is liable for injuries resulting from the obstruction of a street. *Id.*

NEGRO. See CIVIL RIGHTS. COMMON CARRIER, 10. DAMAGES, 1.

NEW TRIAL.

1. Where there is a conflict of testimony, and the facts if believed by the jury would warrant the verdict, the court will not set it aside. *Williams* v. *Phœnix Ins. Co.*, 125.

2. Should not be granted on ground of newly discovered evidence, unless its effect ought to have resulted in a different verdict. *Cleveland R. R. Co.* v. *Long*, 781.

NOTICE. See BANK AND BANKER, 2. BANKRUPTCY, 16. CONSTITUTIONAL LAW, 43, 44. HUSBAND AND WIFE, 19. MORTGAGE, 17. STOCKHOLDER, 1. VENDOR AND PURCHASER, 10.

1. A party who is bound to make inquiry will be affected with all the knowledge he would have got by inquiry. *Cordova* v. *Hood*, 334.

2. It is not necessary that a proclamation of the President should be published, it takes effect when signed and sealed and attested. *Lapeyre* v. *United States*, 334.

NUISANCE. See MUNICIPAL CORPORATION, 7. RAILROAD, 5.

1. Though the jurisdiction of equity to restrain public nuisances is undoubted, it will not be exercised when the same object can be attained in the ordinary tribunals. *Attorney-General* v. *Brown*, 60.

2. The remedy by indictment is so efficacious that equity interferes with reluctance. *Id.*

3. The obstruction of a highway which cannot be used is not such a grievance as equity will redress by injunction. *Id.*

4. Equity will restrain a threatened nuisance to a dwelling if the injury is likely to materially diminish the value of the property, and interfere with its enjoyment. *Adams* v. *Michael*, 197.

5. Such facts should be stated in the bill as would enable the court to determine whether a nuisance would result, and not a simple allegation that such would be the consequence. *Id.*

6. The rule that the obstruction of a navigable river will not be deemed a nuisance if the public are benefited, modified, by requiring the benefit to be *direct*, and to the public *frequenting that port*. *Attorney-General* v. *Terry*, 591.

7. A business which is not a nuisance in itself, may become so, in view of the neighborhood in which it is proposed to be carried on. *Wier's Appeal*, 715.

8. The legislature has recognised that the storing of gunpowder in thickly settled places is a nuisance. *Id.*

9. There is a distinction between a business long-established, which has become a nuisance from increase of population, and a new erection threatened in such vicinity. *Id.*

OFFICE AND OFFICER. See MANDAMUS. TRESPASS, 4.

An officer legally appointed and qualified, who continues to act after the expiration of his term, in good faith, is not held to be criminally usurping the office within the meaning of Act of March 1831 of Ohio. *Kreidler* v. *The State*, 653.

PARKS. See MUNICIPAL CORPORATION, 24, 25.

PARTITION.

1. In partition, equity will not try the question of complainant's illegitimacy. *Riverview Cemetery Co.* v. *Turner*, 198.

2. The most it will do, is to retain the cause *ex gratia* until the complainant settles his title at law. *Id.*

PARTNERSHIP. See EXECUTION, 4. HUSBAND AND WIFE, 21. PRACTICE, 1.

1. May be entered into with reference to a custom or usage of the place where the business is to be conducted. *Waring* v. *Grady*, 61.

2. Such custom will modify the partnership agreement. *Id*

3. To protect a partner against it, the agreement must be so framed, or the partner must give notice of his dissent. *Id.*

4. Where all the partners except one, appear to a bill for an account and allow it to be taken *pro confesso*, the court will not dismiss the bill without reference to a master, upon the general denial of indebtedness by the one, however positive it may be. *Lawrence* v. *Rokes*, 126.

PARTNERSHIP.

5. Though equity will ordinarily give full effect to the Statute of Limitations, relief will not be refused where peculiar circumstances appear to justify a delay. *Lawrence* v. *Rokes*, 126.

6. To operate as a bar the statute must be claimed in the answer. *Id.*

7. Whether actions of account or remedy by bill are subject to any other than the general limitation of twenty years. *Quere?* *Id.*

8. Where partners purchase real estate with the money of the firm as partnership property, upon the settlement of the partnership business brought about by the death of one of the members of the firm, the proceeds of the sale of the interest of the deceased partner in such real estate is to be regarded as land remaining in specie, after discharging its liabilities as partnership stock; and the widow of such deceased partner is entitled to an interest therein for her life only. *Appeal of Belle D. Foster*, 300.

9. On a bill by representatives of deceased partner against survivors, the latter are only to be charged with such sum as the assets would bring with reasonable care and diligence. *Moore* v. *Huntington*, 334.

10. Nor are they to be charged with the real estate of the partnership the title to which is left by the decree to the heirs of the deceased partner. *Id.*

11. The representatives of a deceased partner have no right of possession in partnership property. *Pfeffer* v. *Steiner*, 461.

12. The right of action for any trespass to the property of the firm rests solely in the survivor. *Id.*

13. A partnership claim is not liable for the sole debt of one of the firm, although the party owing the claim was not aware of there being a partnership when he incurred it. *Bartlett* v. *Woodward*, 708.

PARTY-WALL.

Equity will not decree a party-wall to be taken down if it projects slightly over complainant's land and he was aware of it while it was building. *Mayer's Appeal*, 396.

The complainant has his right to damages. *Id.*

PASSENGER. See COMMON CARRIER, 7, 8. NEGLIGENCE, 16. RAILROAD, 14. 15. SALVAGE, 1, 2.

PAYMENT. See ACTION, 7. PLEADING, 3.

1. Where a payment is made by the notes of a third person who had become insolvent, the creditor may return them if the fact of insolvency was unknown at the time. *Roberts* v. *Fisher*, 261.

2. Such is the law in the case of bank-bills and the same should apply to notes. *Id.*

3. To an officer presenting a writ is made under legal compulsion, and is not deemed voluntary. *McKee* v. *Campbell*, 399.

PHYSICIAN. See EVIDENCE, 51. RAILROAD, 10.

PILOTAGE.

1. An Act of Assembly provides that licensed vessels failing to take a pilot shall pay *half pilotage*, one not licensed full pilotage—"and all half pilotage forfeitures and penalties in nature thereof accruing under the act shall be recovered for the society for relief of pilots." *Held* that a forfeiture of *full* pilotage was for the use of the society. *Collins* v. *Soc. for Relief of Pilots*, 462.

2. The appropriation of the penalty is not part of the penal provision and must be construed reasonably. *Id.*

3. The penalty not being a tax its appropriation to a private corporation is constitutional. *Id.*

4. Imposing pilotage on vessels in foreign commerce, and half pilotage on coasters, is not in conflict with sect. 10 of Art. 1 of Constitution of United States. *Id.*

PLEADING. See ACTION, 10, 13. AMENDMENT, 2. CONSTITUTIONAL LAW, 18. INSURANCE, 29. NEGLIGENCE, 5. PRACTICE, 2, 11. TRESPASS, 6.

1. A complaint for flowage containing no allegation of defendant's ownership of the land is bad on demurrer. *Jones* v. *Skinner*, 126.

PLEADING.

2. In Maine an unaccepted bill is no evidence of payment of the original debt, hence a new count may be added to a declaration on the bill, declaring on the debt, by way of amendment. *Strang* v. *Hirst*, 126.

3. A promissory note or accepted bill, however, is *primâ facie* evidence of payment of debt. *Id.*

4. "Fraudulently" in a declaration implies a *scienter*, and is argumentative, but if not objected to is cured by verdict. *Beebe* v. *Knapp et al.*, 457

5. Where an issue of fact not raised by the pleadings was distinctly submitted to the jury without objection, the admission of evidence to sustain such fact is not error, and the pleadings may be amended to conform to the fact proved. *McCord* v. *McSpaden*, 705.

6. Where one count in a declaration is for so negligently conducting locomotives and cars that plaintiff's timber was burned by sparks, and the second count was for not maintaining fences between railroad and plaintiff's land whereby plaintiff suffered, both counts being in *tort*, were properly joined. *P. W. & B. R. R. Co.* v. *Consle*, 784.

POWERS. See TRUST AND TRUSTEE, 18, 22, 23.

PRACTICE. See ACTION, 12. CERTIORARI, 1. COMMON CARRIER, 14. EVIDENCE, 2.

1. Action must be in name of survivors, where one of the partners is dead, for debt due partnership. *Strang* v. *Hirst*, 126.

2. Objection to plaintiff's maintaining suit as surviving partner must be taken in abatement. *Id.*

3. The statement under the R. S. of Maine is a substitute for a special plea and may he bad for duplicity. *Id.*

4. Where a case has gone to decree in state court, it is too late to remove it to the Federal courts. *Kingsbury* v. *Kingsbury*, 127.

5. The removal can only be made by application of defendant on entering his appearance. *Id.*

6. A minor cannot consent to change of forum. *Id.*

7. A voluntary appearance cures any irregularity in the service of process. *Carpentier* v. *Minturn et al.*, 253.

8. No objection can be made to jurisdiction after a general appearance. *Id.*

9. A party who objects to the admissibility of evidence cannot be heard to object to its withdrawal from the jury. *Sittig* v. *Birkestack*, 263.

10. The court has the power at any time during trial to modify its instructions to the jury. *Id.*

11. Where the endorsee of an inland bill sues the drawer in the Circuit Court, it is not enough to allege that the plaintiff is a citizen of one state and the defendant of another. *Morgan's Executor* v. *Gay*, 655.

PROCESS.

1. A return to a summons that defendant was served personally is sufficient without stating that it was in the county. *Knowles* v. *Gas-Light & Coke Co.*, 591.

2. In an action on a judgment of another state, the defendant may show that he was not served, notwithstanding that the record shows that he was. *Id.*

RAILROAD. See CIVIL RIGHTS. CONSTITUTIONAL LAW, 36, 51. EQUITY, 5. FENCES, 1, 2. MUNICIPAL CORPORATION, 17. NEGLIGENCE, 7, 8, 10, 16. TORT, 2.

1. REGULATION OF INTERSTATE TRAFFIC ON RAILROADS BY CONGRESS, 1.

2. To render a railroad liable, under the statute of Indiana, for animals killed, the killing must be the result of direct collision. *O. & M. Railway Co.* v. *Cole*, 198.

3. The company is not liable for injuries resulting from fright. *Id.*

4. The legislature may authorize building a railroad on a public road. *Danville Railroad Co.* v. *Commonwealth*, 397.

5. A railroad obstructing travel on the portion of a public road allowed by law, is not guilty of nuisance. *Id.*

RAILROADS.

6. Where party killed by railroad was guilty of negligence, his family cannot recover damages. *Penna. R. R. Co.* v. *Beale*, 526.

7. The duty of traveller to stop is more obligatory where train cannot be seen. *Id.*

8. If the track cannot be seen from carriage, he should get out and lead his horse. *Id.*

9. Failure to stop before crossing track is negligence *per se*. *Id.*

10. A superintendent cannot employ a physician to attend an employee who has been injured by railroad company's locomotive, and bind the company. *Marquette H. & O. R. R. Co.* v. *Taft*, 527.

11. The power to purchase lands conferred upon a railroad company by the Act of February 1848 of Ohio, is not limited to the acquisition of such as are necessary for operating the road. *Walsh* v. *Burton*, 654.

12. If the company abuses its power, still, after resale and conveyance the title of the vendee is indefeasible. *Id.*

13. A mortgage on the *road* "whether made or to be made," is not a lien upon real estate of the company which has not been used for operating the road. *Id.*

14. Plaintiff being invited by the conductor got into the caboose of a coal train and rode without paying any fare. An accident occurred through the negligence of the conductor, whereby plaintiff was injured. *Held*, the relation of carrier and passenger had not been created, and the company was not liable. *Eaton* v. *D. & L. W. R. R. Co.*, 665.

15. Where a railroad company has divided its business between passenger and freight trains, the conductor of the latter, though called by the same name, has not the powers of a conductor in regard to passengers. Notice of his want of power will be implied from the nature and apparent division of the business, and a person claiming to be a passenger on such train has the burden of proof of circumstances to except him from the general presumption. Per DWIGHT, Commissioner. *Id.*

16. In an action against a railroad for setting fire to plaintiff's timber, under the Code of Maryland, plaintiff may show that defendant's engines had occasioned frequent fires by scattering sparks, thereby proving negligence in their construction and management. *Annapolis & E. Railroad Co.* v. *Gantt*, 781.

17. The onus is on the defendant to show that it has used reasonable care to prevent injury from fire. *Id.*

18. The liability of railroads under the Code, for injuries from fires, extends to all the near and natural consequences of their wrongful act, but not to remote nor incidental. *Id.*

REAL ESTATE. See CORPORATION, 1. PARTNERSHIP, 8.

RECEIPT. See EVIDENCE, 15, 16, 24. NEGLIGENCE, 12.

1. A receipt for bonds which describes them by their numbers and amounts, and states that, "These bonds are held subject to the order of J. L. P. at ten days' notice," makes it the signer's duty to return the same bonds. *Palmer* v. *Hussey*, 262.

2. A refusal to return on demand is a conversion. *Id.*

RECEIVER. See BANK AND BANKER, 3,

1. Where property is legally in possession of a receiver appointed by the court, the court must protect his possession not only against violence, but against suits at law. *Matter of Day, on Complaint of Benson*, 782.

2. If receiver is in possession of articles belonging to another, the remedy of latter is by application for redress to the court, he cannot take them and convert to his own use. *Id.*

3. If owner takes them from receiver's possession he is guilty of a contempt. *Id.*

4. Receiver's title cannot be tried in a proceeding by him for contempt. *Id.*

5. A final order in a proceeding for contempt is appealable. *Id.*

RECONSTRUCTION. See TIME, 5.

RECORD. See CONFEDERATE STATES, 3.

The opinion of the court below and the facts in it are not part of the record and cannot be considered in the Supreme Court. *Bartolett* v. *Dixon*, 389.

RELEASE. See TRUST AND TRUSTEE, 2.

RES ADJUDICATA.

1. Judgment in a suit upon joint and several note in favor of one surety will not bar suit against another, unless the defence in first, was an extinguishment of cause of action or the defences are identical. *Hill* v. *Morse*, 257.

2. Though a former suit may not operate strictly as *res adjudicata*, yet it may be referred to as an element by which a conclusion in accordance with its result may be assisted. *Hume* v. *Beale's Executrix*, 329.

3. In an action for the keep of a horse, the defendant showed that he had previously recovered judgment against the plaintiffs for the use of his horse while it was being kept by them. The presumption was that the damages had been assessed in the first action on the basis of allowing the claim for the keep of the horse, and the claim was merged. *Bemis* v. *Jennings*, 710.

4. A judgment for the full amount of the contract price for digging a cellar is no bar to a subsequent recovery of damages for breach of contract in not having done it within specified time. *Davenport* v. *Hubbard*, 777.

RIPARIAN OWNER.

1. The owners of an upper mill, whose business required the running of their mill only by day, detained the water of the stream during the night, such detention and the larger discharge during the day causing serious damage to the owners of a lower mill, whose business required the running of their mill both night and day. The lower privilege was occupied several years before the upper, and after the upper mill was built the water was for several years allowed to flow during the night, and the lower mill had used it by night and by day. Upon a petition by the lower mill-owners against the upper, for an injunction against the detention of the water by night, it was *held*,

(1.) That the petitioners had acquired no superior rights by their earlier occupation, or by their use of the water by night, so long as they had exercised no rights greater than such as belong to them as riparian proprietors; the full flow of the stream being nothing beyond such right.

(2.) That all that the petitioners were entitled to was a reasonable use of the stream against an unreasonable use or detention by the respondents; that the question was whether the respondents had acted unreasonably in detaining the water; and that the burden of proof on this subject was on the petitioners. *Keeney* v. *Union Manufacturing Co.*, 82.

2. The right in such a case of the upper mill-owner to make the stream useful to him by detaining the water during the night, is of the same quality as the right of the lower mill-owner to take the benefit of the constant flow. In deciding between these conflicting rights, there are to be considered: 1. The custom of the country as to the running of mills. 2. The local custom, if there be one. 3. What general rule will best secure the entire stream to useful purposes. 4. Whether the detention of the water is necessarily an injury to the lower mill, and whether the apparent injury is not caused by the insufficiency of its own privilege. *Id.*

3. The maxim "*aqua currit et currere debet*" is applicable rather to the matter of the diversion of a stream and to the ordinary rights of riparian proprietors as such, than to the case of mill-owners, who have a right to make a reasonable detention of the water by dams for the purposes of their mills. *Id.*

4. The side boundaries of water-lots are to be governed by the course of the stream and drawn at right angles with the central thread. *Bay City Gas-Light Co.* v. *Industrial Works*, 526.

5. There is no distinction between streams that are subject to easement of passage and those that are not. *Id.*

6. Any use of land under rivers compatible with the public easement belongs with the upland. *Id.*

7. Even the beds of navigable tide-waters are subject to the disposal of state laws saving the public rights. *Id.*

RIPARIAN OWNER.

8. The right of docking must not impair the right of navigation. *Bay City Gas-Light Co.* v. *Industrial Works*, 526.

9. Dock lines have nothing to do with boundaries. *Id.*

10. Riparian owner may drain into an adjoining stream. *Treat* v. *Bates*, 527.

11. May prevent any interference with natural flow of stream as will injure his legal privileges. *Id.*

ROAD.

1. The Act of April 1846 of Pennsylvania vacating private roads by prescription is constitutional. *Krier's Private Road*, 397.

2. Roads by prescription rest upon adverse use for twenty years, and not on the fiction of a grant. *Id.*

SALE. See INSURANCE, 31. MORTGAGE, 4. TRESPASS, 5. VENDOR AND PURCHASER, 15, 25.

1. It is a question for the jury to determine whether the title to property passed at time of sale, where the vendor agreed to haul the goods to a certain place. *Dyer* v. *Libby*, 127.

2. If goods are unmistakably designated, delivery is not absolutely essential to complete the sale. *Lingham & Osborne* v. *Eggleston*, 462.

3. Whether a sale is complete must be determined from the construction of the agreement. *Id.*

4. Delivery is almost conclusive evidence that the property shall vest in purchaser. *Id.*

5. Property may pass though something remains to be done by vendor. *Id.*

6. Where price depends on quantity or quality, whatever remains for vendor to do, as weighing, testing, &c., is a condition precedent to transference of title. *Id.*

7. Where the transfer of possession corresponds with the nature of the chattels sold, the sale is valid. *McMarlan* v. *English*, 716.

8. Where there has been actual change of possession the court cannot pronounce sale fraudulent in law. *Id.*

9. The separation from the vendor must be at the time of the sale. *Id.*

SALVAGE.

1. The rule of maritime law that a passenger who has no opportunity to leave a vessel in distress, cannot render a salvage service, may admit of a qualified exception where he has promoted her safety by an extraordinary and peculiar service which he was not compellable to render. But in admitting such an exception in favor of a passenger, the greatest caution is necessary, and especially so where he is of the nautical profession. *The Pennsylvania*, 561.

2. Where a passenger of the nautical profession who has rendered such service, afterwards assumed and exercised illegitimate authority over the vessel, though the circumstances were not such that he incurred an absolute forfeiture of the salvage compensation, its amount was nevertheless materially reduced by reason of such usurpation of authority. *Id.*

SCHOOL. See INFANT, 6.

It is the duty of a school teacher to maintain discipline in the school, and to do this he may expel a scholar. *Scott* v. *School District No.* 2 *in Fairfax*, 716.

SET-OFF. See BILLS AND NOTES, 1. INSURANCE, 16, 36. STOCK, 2.

1. A non-negotiable note payable on demand was executed to F. by the defendant. Fourteen years later the note was transferred and delivered by F. to the plaintiff in part payment of a debt, and the plaintiff brought suit in his own name thereon under the statute authorizing a suit so to be brought. At the time the plaintiff took the note of F. the defendant had for several years had a claim on book against F. greater than the note. The plaintiff knew this and had shortly before been present at a meeting of F. and the defendant at which they had attempted to adjust their mutual claims, and at which F. had told him that he intended to apply the note in part payment of his indebt-

SET-OFF.
edness to the defendant. He also knew that the defendant expected suhe application to be made. The application however was not actually made at the time, the parties separating without having agreed as to the exact balance due. Whether the defendant could set off his claim against the note in the suit: *Quære.* The authorities both English and American are in conflict and confusion upon the point. *Fitch* v. *Gates*, 28.

2. Whether or not such set-off could be made in an ordinary case, yet here the plaintiff must be regarded as having taken the note with full knowledge of an understanding of the parties that it should be applied upon the book account of the plaintiff, and therefore as having taken it subject to the right of the defendant to make the set-off. *Id.*

3. It was not found in terms that F. was insolvent at the time the set-off was sought to be made, but it appeared that the defendant had obtained judgment against F. more than a year before for the amount, that the debt had then been of several years' standing, and that the execution obtained upon the judgment had never been collected. *Held*, that it might reasonably be inferred that F. had not the means of payment or that they were beyond the reach of legal process. *Id.*

4. The fact of judgments being in different courts does not prevent their being set off against each other. *Brooks* v. *Harris*, 262.

5. There must be mutuality in claims in order that they may be set-off. *Id.*

6. One judgment may be set off against another though the equitable title to the former is in a stranger. *Id.*

7. A claim by the United States for bonds unlawfully procured from it, is sufficiently liquidated to be the subject of set-off. *Allen* v. *United States*, 335.

SHERIFF. See TRESPASS, 1.

1. A sheriff is a *quasi* bailee of property seized by him under process, and only bound to use such care and diligence as a bailee for compensation. *Price* v. *Stone*, 61.

2. An attorney issuing an execution is liable to the sheriff for his poundage thereon. *Campbell* v. *Collison*, 198.

3. But not on the amount the judgment has been reduced by the court since the execution issued. *Id.*

SHERIFF'S SALE. See TRUST AND TRUSTEE, 15.

1. Will be set aside where there is gross inadequacy of price, and owner has been prevented by mistake from attending it. *Metzler* v. *Shaumann*, 198.

2. One who contributes to such mistake even innocently cannot be permitted to take advantage of it. *Id.*

SHIPPING. See CONSTITUTIONAL LAW, 37. NEGLIGENCE, 1. PILOTAGE, 1. SALVAGE, 1.

1. The presumption is that advances made to a captain in a foreign port to pay for necessary repairs or supplies were made upon the credit of the vessel. *The Emily Souder*, 335.

2. Liens for such advances have priority of existing mortgages. *Id.*

3. General average extends to the loss of the ship when the cargo is saved, and the loss of the cargo when the ship is saved. *McLoon's Administrator* v. *Cummings*, 398.

4. When the cargo is sent to the port of destination the parties are bound by an adjustment made there. *Id.*

5. This rule does not obtain in case of fraud or mistake or when the voyage is broken up and ended. *Id.*

6. Where a deviation is justified in case of disaster by a peril of the sea disabling the vessel from proceeding, the master becomes the agent of all the parties in interest. *Id.*

7. If the vessel cannot proceed it is the duty of master to reship the cargo to port of destination. *Id.*

8. If master can save part of the freight he will be considered the owner's as well as the shipper's agent, if he cannot he will be shipper's agent alone. *Id.*

9. If the master pays a premium for gold drafts to pay the expenses, in a

SHERIFF.
suit to recover the shipper's share the verdict must be for amount in gold, and not for the premium paid. *McMoon's Administrator* v. *Cummings*, 398.
10. If freight and charges at port of destination consume the value of the cargo, there is nothing upon which to charge the general average. *Id.*
11. The existence or non-existence of a maritime lien for repairs is wholly independent of the port in which the repairs are made. *Taylor* v. *Steamboat Commonwealth*, 502.
12. In a foreign port, a party making repairs or furnishing supplies to a vessel is presumed to rely upon the credit of the vessel itself; but at the home port such a presumption does not exist, and it must appear affirmatively that the repairs were made or the supplies furnished on the credit of the vessel and not on the credit of the owners. *Id.*
13. If the owners at the home-port are in good credit, no maritime lien is created. *Id.*
14. At a foreign port the master is only authorized to have such repairs made as will enable the vessel to pursue her voyage. At the home-port, the owners are not thus restricted. *Id.*

SIDEWALK. See HIGHWAY, 21. STREETS, 3.
1. The mere slippery condition of a sidewalk arising from the ordinary action of the elements (as snow and ice) is not a defect which renders a town liable under the statutes of Wisconsin. *Perkins* v. *City of Fond du Lac*, 715.
2. The liability of a city for injuries resulting from a defective sidewalk is no longer open for discussion. *Colby et ux.* v. *City of Beaver Dam*, 778.
3. City is bound to repair any defect which endangers the safety of travellers. *Id.*
4. Where defect has existed for any length of time the city is presumed to have had knowledge of it. *Id.*

SLANDER.
1. It is not competent in slander to prove by the opinion of witnesses that words spoken in the third person were spoken of plaintiff. *McCue v. Ferguson*, 527.
2. When the words are in second person it is a question of fact to whom they were addressed. *Id.*
3. A withdrawal of a plea of justification, is no evidence of contradiction of the statement, "that plaintiff had not said that the words were true." *Id.*

SLAVE. See CONSTITUTIONAL LAW, 10.

SNOW. See HIGHWAY, 20.

SPECIFIC PERFORMANCE.
1. Will not be decreed against a vendor whose wife refuses to join in the deed. *Reisz's Appeal*, 527.
2. No abatement in the price would be just to both parties. *Id.*
3. The burden of showing title in himself, rests on the vendor who brings a bill for specific performance against a vendee denying the sufficiency of his title. *Walsh* v. *Barton*, 655.
4. A recent deed to vendor is not sufficient. *Id.*
5. A vendee is not compelled to perform his agreement if the property is subject to a judgment lien. *Id.*

STAMP.
1. Assignment of mortgage not stamped is not void unless omitted with intent to defraud. *Dela* v. *Stanwood*, 127.
2. The stamp on the deed is the same whether the consideration be paid in gold or United States notes. *Hall* v. *Jordan*, 717.
3. Where suit is brought on an instrument requiring a stamp under the Act of July 13th 1866, and there is no evidence that plaintiff omitted the stamp with intent to evade the act, the instrument may be used in evidence. *Black* v. *Richardson*, 783.

STATUTES. See ATTORNEY, 1. BANKRUPTCY, 40. COURTS, 14.
1. A statute may be good in part and bad in part, and when it is divisible the good part will be sustained. *Lowndes Co.* v. *Hunter*, 53.

STATUTES.

2. If matter foreign to the title is introduced into the statute but is divisible from that which falls within the title the former only is void. *Lowndes Co.* v. *Hunter*, 53.

3. Where a statute creates a claim against a county but provides no remedy, a suit by summons and complaint is the proper one. *Id.*

4. When a local statute contains provisions which apply to the whole state, it is valid though the title does not refer to them. *The People ex rel. Akin* v. *Morgan*, 62.

5. It is otherwise where a public statute contains provisions of a private nature not disclosed in the title. *Id.*

6. The law does not favor the repeal of statutes by implication. *Waterworks Co.* v. *Burkhart*, 262.

7. Where a statute is re-enacted after a construction given to it by the commissioners of Internal Revenue, it is not to be deemed a legislative adoption of such construction. *Savings Bank* v. *United States*, 717.

8. The repeal of a statute by implication is not favored. *Somerset and Stoystown Road*, 717.

9. A subsequent affirmative statute is a repeal of a former as to the same matter if it introduces a new rule and is intended as a substitute. *Id.*

10. If two acts provide remedies differing only in form, for the same grievance, the latter is a constructive repeal of the first. *Montel* v. *Consolidation Coal Co.*, 783.

STOCK. See BANK AND BANKER, 12. BOND.

1. The capital stock of a corporation is a trust fund for the benefit of the general creditors, and they have a right to actual payment of stock subscriptions. *Sawyer* v. *Hoag*, 327.

2. A stockholder indebted to an insolvent corporation for unpaid shares cannot set off a debt due him by the corporation. *Id.*

3. Stock in a corporation is the individual property of the owner, which he may sell or dispose of, like any other property, as he may see proper; and the president and directors have no control, power or dominion over it, and no duty to perform in reference to its sale, unless it be to see that proper books and facilities are furnished for its transfer. *Commissioners* v. *Reynolds*, 376.

4. In the purchase of stock by a director or president of a corporation from a stockholder, the relation of trustee and *cestui que trust* does not exist between them. *Id.*

STOCKHOLDER.

1. A stockholder represented by proxy is presumed to have notice of all proceedings during such representation. *Thames* v. *Central City Ins. Co.*, 54.

2. There is no lien at common law in favor of a corporation against its stockholders for debts due by them. *Mut. Ins. Co.* v. *Cullom*, 54.

3. But where the charter provides for such lien it will embrace a general debt contracted with the corporation. *Id.*

STREETS. See MUNICIPAL CORPORATION, 1, 2, 9, 21, 34. NEGLIGENCE, 20.

1. A statute authorizing the expense of paving the road-bed of a city street to be assessed in the proportion of two-thirds on the property abutting on the street and the remaining third on the public at large, is unconstitutional. *Mayor of Newark* v. *State*, 441.

2. Assessments for local improvements of this character may be made against the property peculiarly benefited, but such assessment must be made to the extent only of such peculiar benefits. *Id.*

3. This rule does not apply to improvements of the sidewalk, which is to be regarded as subservient to the premises to which it is attached and the expense of improving which may be charged wholly to the owner. *Id.*

4. A statute directing a municipal corporation to have a street paved at the expense of the property-owners, and thereafter to keep it in repair at the expense of the city, is not a contract with the property-owners, and the legislature may direct a repaving at their expense. *Id.*

5. A municipal corporation has a right to raise its streets and bridge them. *Allentown* v. *Kramer*, 527.

STREETS.

6. A municipality exercising its lawful authority is not liable for collateral injuries. *Allentown* v. *Kramer*, 527.

7. It is liable for negligence in construction or repair of public works. *Id.*

SUMMONS. See PROCESS, 1.

SUNDAY. See BILLS AND NOTES, 28, 30.

1. The defendant hired a horse of the plaintiff on Sunday to go on that day to the town of S. He went several miles beyond, and while doing so caused the death of the horse by overdriving. *Held*, in an action of trover joined with case, that the plaintiff could recover, notwithstanding the statute prohibition of all secular business on Sunday. *Frost* v. *Plumb*, 537.

2. And it seems that he could equally recover for an injury to the horse by the wrongful act of the defendant, within the limits for which he was hired. *Id.*

3. The distinction is between wrongful acts which constitute a mere breach of the contract, requiring on the part of the plaintiff the proof of the contract as an essential part of his case, and wrongful acts that are independent of the contract and toward which the contract stands in a mere incidental relation. *Id.*

4. Although Sunday is *dies non juridicus* at the common law, and although the statute of Illinois prohibits all secular employment on that day, yet in special cases where public policy or the prevention of irremediable wrong requires it, the courts may sit on that day and issue process. *Langaber* v. *Fairbury R. R. Co.*, 747.

5. An injunction issued on Sunday to prevent a railroad company from taking possession of a public street in a town, without having made compensation to property-owners who would be injured thereby, sustained. *Id.*

SURETY. See BANK AND BANKER, 9. BILLS AND NOTES, 8. MORTGAGE, 23. TRUST AND TRUSTEE, 24.

1. Where one of several parties signing a note is the real principal, the rest are *primâ facie* sureties, and the burden of proof is on the party alleging contrary. *Flanagan* v. *Post*, 62.

2. A security from principal to surety enures for benefit of co-surety. *Id.*

3. Representations made to a surety on the faith of which he signs a note, will not affect a co-surety unless he had knowledge of them. *Id.*

4. If surety gives his notes, to be in full satisfaction of original debt, *when paid*, the principal is not discharged, if part of notes only are paid. *Emery* v. *Richardson*, 127.

5. Surety upon satisfying debt, is entitled to all the securities either legal or equitable which creditor has, and if he parts with any the surety is exonerated to the extent he may be prejudiced thereby. *Freaner* v. *Yingling*, 199.

6. Creditor cannot be compelled to resort to principal debtor before proceeding against surety, *Id.*

7. One who has been discharged from his primary liability, may still be held to contribute in favor of co-surety. *Hill* v. *Morse*, 257.

8. RIGHTS OF SURETIES INTER SESE, 529.

9. When a debtor tenders payment of a debt for which a surety is bound and the creditor declines to receive it, the surety is discharged. *Joslyn* v. *Eastman*, 783.

TAXATION. See ALIEN, 5. BANK AND BANKER, 13. CERTIORARI, 10. CONSTITUTIONAL LAW, 25, 26, 30, 34. MUNICIPAL CORPORATION, 29.

1. A tax-payer having no other interest cannot maintain bill in equity against the public authorities to prevent acts claimed as illegal. *Tifft* v. *City of Buffalo*, 127.

2. But if he sustains some specific injury he may maintain an action in his own name. *The People ex rel. Akin* v. *Morgan*, 128.

3. A tax on "bowling alleys," and on venders of merchandise, and all other places of business or amusement, does not authorize a tax on merchants, bankers and brewers. *Butler's Appeal*, 522.

4. "Other places of amusement" must be of the kind specifically designated. *Id.*

TAXATION.

5. A profit upon the capital passed to the stockholders is the measure of the state tax on dividends. *Com.* v. *P., F. W. & C. Railway Co.*, 717.

6. If a dividend is declared the stock is taxable whether the dividend be earned or not. *Id.*

7. A nominal increase of shares without transferring anything to the stockholders is not a dividend. *Id.*

8. An option to the stockholders of taking for each share the sum of $40 of the capital stock upon payment of $4 for each share is not such a stock dividend as is liable to taxation. *Com.* v. *Erie & Pittsburgh R. R.*, 717.

9. It is not a *presumption* that an increase of stock is a stock dividend, it is a question of fact for the jury. *Id.*

10. It is for the legislature to determine what property, real or personal, shall be subject to and what shall be exempt from taxation. *Brick Co.* v. *Inhabitants of Brewer*, 735.

11. Exemption of property from taxation is the imposition of increased taxation upon the non-exempt property. *Id.*

12. The legislature cannot constitutionally transfer to municipal corporations the power of determining upon what property, real or personal, taxes shall and upon what they shall not be imposed. *Id.*

13. Where the constitution of the state requires taxes, voted by the legislature, to be assessed upon all taxable property in the town, or district, subject to the tax, rateably, or in proportion to the value of the estate or in any other similar manner, it is not competent for the legislature, with the assent of towns, where real estate is situated and liable to taxation, to provide, even by a general law, applying to the whole state, that manufacturing establishments, going into operation after the date of the statute, and the consent of the town, together with the capital invested in such establishments, shall be exempt from taxation, while other similar establishments, already existing in such towns, remain subject to such tax. Such exemption is, virtually, the levy of an increased tax upon all the taxable estate in the town, and to that extent, depriving the owner of its value without any equivalent benefit, either directly or indirectly. *Id.*

14. It is essential to all just taxation that it be levied with equality and uniformity. *Id.*

TENDER. See FRAUD, 1.

TERRITORIES.

1. The territories, even after being organized by Congress, possess none of the attributes of sovereignty. They cannot, therefore, enact laws for the forfeiture of lands of aliens. *Montana* v. *Lee*, 487.

2. The nature and extent of territorial governments discussed, their powers defined and explained. *Id.*

TICKET. See COMMON CARRIER, 8.

TIMBER.

An assignment of a permit to cut timber transfers to the assignee the trees afterwards cut under it, and he may maintain trespass against an officer attaching them as the assignor's. *Sawyer* v. *Wilson*, 261.

TIME. See BILLS AND NOTES, 12. LACHES, 4.

1. Suit brought Oct. 6th 1868 on a note due Oct. 6th 1862, is not barred by the statute. *Menges* v. *Frick*, 399.

2. The day on which the cause of action arose is to be excluded from computation. *Id.*

3. When a thing is to be done within a certain time from a prior day, the day is to be excluded. *Id.*

4. Where a debtor executes a bill of sale to secure the payment of a sum of money, and expressly provides that if it is not paid "immediately upon demand in writing" that the creditor should seize and sell the goods, a demand in one week and a sale in eight days thereafter will be held to be a reasonable allowance of time. *Wharlton* v. *Kirkwood*, 592.

5. Congress, under the Reconstruction Acts, approved the Constitution of Virginia on April 10th 1869, and ordered it to be submitted to the people.

TIME.

On July 6th 1869 it was submitted and adopted by a large majority of the people, who on the same day elected a governor, legislature and other state officers. The governor was inaugurated in September 1869, and the legislature met in October 1869, and passed acts ratifying the 14th and 15th Amendments—all of these preliminaries being required by the Reconstruction Acts before the admission of the state to representation in Congress. Congress, on January 26th 1870, passed an act admitting the state to representation. The constitution contained a provision for homestead exemption, but this was not applicable to debts incurred prior to the time the constitution went into effect. *Held*, that as to this clause the constitution went into effect on the day of its ratification by the people, July 6th 1869. *In Re Deckert*, 624.

TITLE. See FRAUD, 3. HUSBAND AND WIFE, 30. LIMITATION, 1. RAILROAD, 12. SALE, 1. VENDOR AND PURCHASER, 14, 23, 25.

TORT.

1. Where the law imposes upon a party an obligation which he neglects, and damage results to another, an action on the case founded in tort lies. *Philada., W. & B. R. R. Co.* v. *Cousle*, 784.

2. The fact that fire from a railroad was first communicated to a neighbor's land, and then to the plaintiff's timber, does not affect the railroad's responsibility to plaintiff. *Id.*

TOWN. See ESTOPPEL, 7. HIGHWAY, 8, 23. SIDEWALK, 1.

TRADE-MARK.

1. A manufacturing company will be protected in the use of a certain trade-mark, though part of the trade-mark consists of a family name. *Meriden Manufg. Co.* v. *Parker*, 153.

2. Equity will restrain the use of the same name in so far as it forms a material part of the trade-mark, and will necessarily injure the company, even though another may acquire the right of that name from parties to whom it legitimately belongs. *Id.*

3. It is not every use of the name, however, that will be held to necessarily infringe the trade-mark, or that will be restrained by injunction. *Id.*

4. Though equity will not protect a trade-mark which deceives the public, it is not every erroneous impression which may be drawn from the use of a trade-mark, that will be sufficient to destroy its validity. *Id.*

5. The employment of a family name as a component part of a trade-mark is no fraud upon the public, though the family does not actually make the articles bearing the name, provided they are the result of their skill and experience. *Id.*

6. The complainant, a company engaged in manufacturing plated forks and spoons, acquired the right to the use of the trade-mark—"1847 Rogers Bros. A. 1."—subsequently the respondent by an arrangement with three brothers named Rogers, manufactured plated spoons marked "C. Rogers Bros. A. 1," *Held*, that this was an infringement of complainant's trade-mark, and that the use of the term "Rogers Bros." should be restrained. *Id.*

7. The name of an incorporated town or borough cannot be employed as a trade-mark even if adopted and used as such prior to its use in a geographical sense. *Glendon Iron Co.* v. *Uhler*, 543.

TRESPASS. See EVIDENCE, 1. HUSBAND AND WIFE. 44. TIMBER.

1. A count, in a suit against a sheriff on his official bond, is not a count in trespass, though it allege that the authority of the sheriff was void or illegal. *Price* v. *Stone*, 61.

2. One who commits a wilful and malicious trespass upon another's property will be held responsible for all injury resulting to third parties in consequence thereof. *Munger* v. *Baker*, 199.

3. A landowner who has had the actual location of certain land for more than twenty-five years, is entitled to an injunction to restrain another from building on the land, until he establishes his right at law. *Southmayd* v. *McLaughlin*, 199.

4. An officer who sues attached property without the notice required by law, becomes a trespasser *ab initio*. *Sawyer* v. *Wilson*, 261.

TRESPASS.

5. Notice of sale, defective from want of sufficient time, is not cured by a postponement to a day sufficiently remote. No valid sale can be made at the adjournment. *Sawyer* v. *Wilson*, 261.

6. In trespass *q. c. f.* when the declaration counts upon a single act of trespass which is justified, the plaintiff cannot traverse it, and new assign. *Spencer* v. *Bemis*, 654.

7. The amount of force one has a right to employ in self-defence, depends on the perilous condition he has reason to suppose himself in. *Edwards* v. *Leavitt*, 719.

8. Evidence showing the *animus* of the defendant towards plaintiff, is admissible in trespass for assault and battery. *Id.*

9. Exemplary damages may be recovered in trespass. *Id.*

TROVER. See BAILMENT, 4, 5. RECEIPT, 2.

1. A commission merchant who sells before notice of the revocation of his authority is not liable in trover for the goods sold. *Jones* v. *Hodgkins*, 262.

2. A purchaser under such sale acquires a good title as against a prior purchaser from the consignor without delivery. *Id.*

3. The receipt of a note from the payee, who has illegally sold a wagon of the plaintiff's, is not such a ratification as will prevent his maintaining an action of trover for the wagon. *Abbott* v. *May*, 463.

4. The owner of negotiable securities which have been stolen, may follow and reclaim them wherever he finds them, and the burden is on the holder to show that he took them in the usual course of business for value. *Robinson* v. *Hodgson*, 463.

5. In trover for such securities merely showing they were in possession of another from whom defendant received them is no defence. *Id.*

6. A holder's possession is *primâ facie* evidence of ownership, the presumption being that it was honestly acquired. *Id.*

TRUST AND TRUSTEE.

1. If trustee is authorized to change investment, upon written consent of *cestui que trust*, he is liable unless such consent is obtained. *Crocker* v. *Pierce*, 128.

2. Equity will set aside a release given to a trustee, where there is "inadequacy of price and inequality in the advantage of the bargains," by which the release was obtained. *Id.*

3. Trustees are not allowed to purchase the property of their *cestuis que trust* upon principles of public policy. *Pairo* v. *Vickery*, 200.

4. Equity discountenances transactions between trustees and *cestuis que trust*, and the *onus* of showing their perfect *bona fides* is on the trustee. *Id.*

5. Lapse of time and death of parties are grounds for refusing relief against trustee, especially if injustice might be done by interference of the court. *Id.*

6. INVESTMENTS BY TRUSTEES, 201.

7. A resulting trust does not arise in favor of one of two joint purchasers unless his part is definite and what money he pays is paid for some aliquot part of the property. *Olcott* v. *Bynum*, 335.

8. In no case can it arise for more than the money actually paid. *Id.*

9. Where a deed of trust provided that certain money should be paid in instalments, and in default the whole premises might be sold, on a sale by the trustee he may retain out of the proceeds not only the instalment due but the entire amount. *Id.*

10. Under certain circumstances a sale of a large and valuable tract in a deed of trust may be proper to be made for cash, and on the premises, though in a remote part of Virginia. *Id.*

11. Where a bill is filed for an alleged breach occurring thirty-seven years before, and after the trustee is dead, it will be dismissed on the ground of laches. *Hume* v. *Beale's Executrix*, 336.

12. And this although the *cestuis que trust* were women and the trustee a lawyer. *Id.*

13. A voluntary deed of trust, reserving no power of revocation, made with

TRUST AND TRUSTEE.

a nominal consideration and without legal advice as to its effect, and where there was evidence that its effect was misunderstood by the grantor, was set aside and a reconveyance ordered. *Garnsey* v. *Mundy*, 345.

14. The fact that the grantor's infant children were the beneficiaries under the trust-deed was not sufficient to prevent the relief. *Id.*

15. Where artifice or trick is resorted to in procuring property at sheriff's sale at an under value, the purchaser takes as trustee *ex maleficio*. *Faust* v. *Haas*, 456.

16. Unless the discretion of a trustee is so trammelled by a promise to exercise it in a particular way, equity will not disqualify him. *Williams's Appeal*, 463.

17. A chancellor will so control a trustee as to prevent his disappointing the intent of the donor. *Id.*

18. A verbal direction of a testator and promise of the executor to perform are not a fraud upon a power in a will. *Id.*

19. Where the husband of one of the residuary devisees who had means agreed to pay the expenses of litigating a devise to a charity, and if successful to pay himself out of the same and divide the balance with his wife and the other devisees, there is sufficient consideration for his agreement to be trustee. *Dickey's Appeal*, 464.

20. The husband must proceed until released by all the parties. *Id.*

21. Any purchase of the land in dispute would enure to the benefit of all. *Id.*

22. A deed of trust from husband and wife, with power for trustee to sell on request of wife, includes a power to mortgage at her request. *Zane* v. *Kennedy*, 464.

23. Absolute power to sell includes power to mortgage. *Id.*

24. If a mortgage is given to secure the payment of notes of the wife's son, and they are extended without consideration, she will not be discharged if she were surety. *Id.*

25. Trustee is only chargeable with simple interest for failure to invest trust-funds. *Smith and Barber, Exs.*, v. *Darby*, 784.

UNIVERSITY. See CONSTITUTIONAL LAW, 38.

USURY.

1. The payment of a premium to the assignee of a mortgage will not render it usurious. *Conover* v. *Hobart*, 196.

2. The terre tenant of the land cannot set up usury as a defence to a suit on a mortgage. *Id.*

3. As a defence must be specially pleaded. *The Confederate Note Case*, 707.

4. Where the agent of the borrower negotiates a loan for the highest legal rate of interest, and without the knowledge of the lender also retains a fee for his services, the loan is not usurious. *Sage* v. *Wright*, 719.

5. The borrower will be bound by the representations of his agent made to the lender, that the debt was honest and would be paid. *Id.*

VENDOR AND PURCHASER.

I. *Of Real Estate.*

1. A vendor who unwarrantably refuses to accept the purchase-money and make conveyance, is not entitled to interest on the purchase-money from the time it was to be paid until he is compelled by final decree to convey. *King* v. *Ruckman*, 63.

2. If part of the purchase-money was to be secured by a mortgage payable in five years, and there has been a delay of that amount of time before final decree, the vendor is not entitled to cash. *Id.*

3. The measure of damages for refusal to convey is the same as in case of sale of personal property, when the equity of the case permits. *Id.*

4. No compensation will be allowed for lands which the vendor had contracts for, but was unable to convey. *Id.*

5. A vendor who takes possession of land under articles of sale is not liable for use and occupation. *Carpenter* v. *United States*, 336.

VENDOR AND PURCHASER.

6. The vendor's lien exists against a purchaser having notice of the deed which shows on its face that the consideration is yet to be paid. *Cordova* v. *Hood*, 336.

7. Taking a note from vendee with security is not an absolute abandonment of the lien. *Id.*

8. The presumption of abandonment of the lien, may be rebutted by the vendor's testimony if it is positive. *Id.*

9. Part payment of the note and taking a new one does not displace the lien. *Id.*

10. Where purchaser accepts a deed which recites the conveyance of "all of a certain lot which has not been conveyed to other persons by the grantor," he will be deemed to have notice of a prior grant. *Quinlan* v. *Pierce et al.*, 719.

11. Equity will rescind a contract for the purchase of land, made on the faith of representations by the vendor, which are fraudulent and false. *Risch* v. *Von Lilienthal et ux.*, 720.

12. The fact that purchaser visited the land himself is *not conclusive*, that he did not finally purchase *on the faith* of the representations. *Id.*

13. Mere inadequacy of consideration is not sufficient ground for rescinding a contract. *Id.*

II. *Of Personal Property.* See FRAUD, 1. SALE, 6, 9.

14. When anything remains to be done by either or both the parties to a contract of sale, before delivery, the title does not pass. *Gibbs* v. *Benjamin*, 93.

15. So inflexible is this rule, that when the property has been delivered, if anything remains to be done by the terms of the contract before the sale is complete, the title of the property still remains in the vendor. The contract must be *executed* to effect a complete sale. *Id.*

16. The mere delivery of goods to the vendee is not sufficient to take a case out of the Statute of Frauds; he must accept and receive them. *Id.*

17. A representation made by a vendor may relieve the purchaser from that care and caution he would otherwise be bound to employ, but there should be the clearest proof of his reliance on such representation. *Vandewalker* v. *Osmer*, 200.

18. The purchaser having the property before him, cannot shut his eyes and ears to defects plainly discoverable, and pretend that he relied on the representation. *Id.*

19. As in cases of warranty, so in representations, obvious defects are not cured, because the law requires the purchaser to examine the property if present with such care and skill as a prudent man would. *Id.*

20. A *bonâ fide* purchaser is one who buys property of another without notice that some one else has a right to it, and pays a full and fair price for it before notice. *Spicer et al.* v. *Waters*, 263.

21. To constitute a *bonâ fide* purchaser the consideration must be actually paid, not merely secured to be paid. *Id.*

22. If the title of a purchaser is void as against the vendor's creditors by reason of fraud, the defect attaches to every subsequent purchaser not *bonâ fide*. *Id.*

23. If the vendor makes an unconditional delivery of the article, a *bonâ fide* purchaser from the vendee acquires a valid title, though the original vendor was induced to sell by fraud of the vendee. *Bernard et al.* v. *Campbell*, 263.

24. It is on the principle of estoppel, that the rightful owner is prevented from asserting his claim against a *bonâ fide* purchaser, after delivery of possession. *Id.*

25. No title passes when a sale is procured by fraud. *Id.*

26. The design not to pay for goods is such a fraud as will avoid the sale. *Id.*

27. The rule is that the owner of goods obtained by fraud may follow and reclaim them from any one not a *bonâ fide* purchaser. *Id.*

28. Where a vendor brings a suit against a vendee, who has paid by a mortgage on real estate, asserting "that it was good," the burden of proof

VENDOR AND PURCHASER.
is on the vendor to show that there was a prior encumbrance which made the title bad. *Bristol* v. *Braidwood*, 528.
29. The rule of *caveat emptor* applies in such a case. *Id.*
30. If the vendee says "there is no encumbrance" when he knows there is, he is liable for a fraudulent representation, and the vendor may rescind and claim his property. *Id.*
31. If he says, "none that he knew of," the vendor is put upon inquiry for himself and the rule of *caveat emptor* applies. *Id.*

VENUE. See CRIMINAL LAW, 10, 12.

VERDICT. See CRIMINAL LAW, 19, 22.

VOTE. See CONSTITUTIONAL LAW, 12, 19.

WAGER. See ASSUMPSIT, 3.
1. The common law allowing actions on wagers not contrary to public policy has never been in force in New Hampshire. *Winchester* v. *Nutter*, 53.
2. In New Hampshire all wager conrtacts are void. *Id.*
3. But one unconnected with a criminal offence is no offence against the criminal law. *Id.*

WATERS AND WATERCOURSES.
The rights of the owner of the surface and the owner of mines, do not differ in any way from those of owners of adjacent closes, and the owner of the surface cannot be protected against the loss of water by percolation into the mines. *Ballacorkish Mining Co.* v. *Harrison*, 592.

WAR. See CONFEDERATE STATES, 2. CONSTITUTIONAL LAW, 1. MORTGAGE, 6.
1. The intervention of the late war was a sufficient excuse to the holder of a policy of life insurance, for not paying his premiums as they accrued during the war, the insurer being resident and domiciled upon one side of the military lines, and the insured upon the other. *Hancock* v. *N. Y. Life Ins. Co.*, 103.
2. WAR CLAIMS AGAINST THE UNITED STATES, 265, 337, 401.
3. The late war between the United States and the Confederate States, was a public war in such sense that all the people of one section were public enemies of the people of the other section. *Degiverville* v. *Dejarnette*, 318.
4. An alien enemy, though he may not sue, may be sued and his property within reach of process subjected to execution during the war. *Id.*

WARRANTY. See COVENANT, 8. LEGAL TENDER NOTES, 3.
1. Representations made by the vender of a patent fork for elevating grain, &c., "that it was in all respects a good fork, would do good work in hay, grass, &c., and was fit for the use intended," amounted to a warranty. *Elkins* v. *Kenyon et al.*, 783.
2. If the instrument was of no practical utility for the use intended, the vendee is entitled to rescind the contract of sale. *Id.*

WAY.
1. Where a grant is made of a free passage-way over land, and at the end of the lane used as such passage-way there is a gate, the maintenance of the gate is not *per se* a wrongful obstruction. *Connery* v. *Brooke*, 399.
2. If the gate is not a practical hindrance to the use of the passage it is not illegal. *Id.*
3. A grant must be taken most strongly against the grantor if there is any doubt. *Id.*
4. Judgment in trespass for taking down the gate is no bar to an action for the obstruction. *Id.*

WILL.
1. A devise to the commissioners of a county, to be appropriated by the commissioners and their successors for the use of the county for ever, vests a title in fee simple in the county. *Hayward* v. *Davidson*, 254.
2. A beneficiary under a will, whose property is given by the will to

WILL.
another, cannot take and also claim his own property, he must elect. *Huston* v. *Cone*, 655.
3. It must *plainly* appear that it was not testator's intention for him to have both. *Id.*
4. In case of widow's dower the rule is the reverse. *Id.*
5. A court of equity has power to compel an election. *Id.*
6. Such election to be binding must have been made with a knowledge of the facts and the party's rights. *Id.*
7. Money borrowed by a husband from his wife and secured by a note, will after her death be regarded as a claim against him, and a release of it, by her will, is a beneficial provision for the husband. *Id.*
8. A testator may provide in his codicil to a will made in January 1873, that if he should die within 30 days a former will made in 1871 should be deemed as his last will. *Hamilton's Estate*, 720.
9. Charitable bequests made in the will of 1871 were not avoided by the Act of April 26th 1855. *Id.*

WITNESS. See HIGHWAY, 24. HUSBAND AND WIFE, 3.
1. A witness may waive his constitutional right of not being compelled to give evidence against himself. *State* v. *Ober*, 53.
2. He waives it by becoming a witness in his own behalf, and must then be subject to the tests of other witnesses. *Id.*
3. Where a witness is asked on cross-examination if he had a certain conversation with a person named and denies it, the deposition of the person with whom the alleged conversation took place is admissible to impeach the witness, notwithstanding it was taken under a commission at the execution of which the witness sought to be impeached was not examined. *P. & C. Railroad* v. *Andrews*, 566.
4. A wife being empowered by statute to sell to her husband a mortgage which is her separate property, must be held a competent witness for her husband to show that such mortgage was free from usury. *Sage* v. *Wright*, 720.
5. To be competent to prove handwriting must have such knowledge of it as to form an opinion when he sees it. *Guyette* v. *Town of Bolton*, 777.

END OF VOL. XXII.